[Rao Bahadur K. A. Krishna Aiyangar]

Appendix II.

Vide **Answer to Question No. 11.**

Allotment and Expenditure under Protective Irrigation and Miscellaneous Public Improvements.

	Grant for 1099.			Outlay up to end of Edavam, 1099.		
	Works.	Repairs.	Total.	Works.	Repairs.	Total.
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1. Protective Irrigation ...	94,570	17,410	1,11,980	37,377	14,065	51,442
2. Miscellaneous Public Improvements.	66,906	52,256	1,19,162	34,682	34,622	69,304
Total...	1,61,476	69,666	2,31,142	72,059	48,687	1,20,746

* Does not include Rs. 3,660, being the undistributed balance in the reserve on 1-11-1099.

Note.—The amounts shown as spent are those actually paid and booked and are exclusive of the usual retention on the value of works done and billed for, withheld for the due performance of the contract, which retention becomes payable with final bills. The liabilities incurred for works done but not measured or paid for before the end of Edavam are also not included. The figures given do not give a correct indication of the works actually done.

LEGISLATION.

The Nayar Regulation Amendment Bill. – (Contd.)

MR. A. HOOGEWERF (*Nominated*): Sir, Mr. Krishna Aiyangar's analogy in regard to law and practice of other communities, I am sorry to say, is not quite applicable to the present case.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, will you kindly permit me to bring to your notice a circumstance relating to the discussion that took place yesterday over Section 22? After the House rose we met and discussed the question just to ascertain whether it was not possible to reach an understanding and at a later stage move amendments on the lines agreed upon. I may say, Sir, that there is considerable agreement already reached; the final drafting of the agreed amendment may take some time. Therefore, with your permission, Sir, I move that the consideration of Clause 22 and the amendments moved thereto be taken up at a later stage.

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MR. T. LAKSHMANA PILLAI (*Nominated*): I beg to second the motion.

PRESIDENT: I have no objection to the course suggested. I take it that the House accepts it.

The motion was carried.

Clause 23.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move that the following be substituted for sub-clause (1):—

"*Property obtained by gift or bequest from the husband or father as the case may be, by the wife widow, child or children, as the case may be, or acquired out of property so given, bequeathed or inherited from the husband or father, as the case may be, after Regulation I of 1088 came into force, shall, subject to the provisions of Chapter IV, belong to the wife or widow and each of the children in equal shares if the gift or bequest is found to have been intended to benefit the wife or widow and children equally.*"

The object of my amendment is to indicate the nature of the presumption arising under gifts made by husbands or fathers as the case may be. In the clause as provided by the Select Committee, it is stated that any gift made by any husband or father must be presumed, to start with, to belong to all the children and the wife. I am submitting that to raise a presumption of that description is not quite correct. For example, in the case of a father making a gift in favour of, say, one of the younger children, it cannot be said that such a gift should be presumed to belong to all the children in the absence of any indication in the instrument of gift. The Select Committee start with the assumption that any gift made by the father irrespective of the donee among the children should belong to all the children. If it is made in favour of the eldest of the children, I am prepared to grant there is a presumption that, he being the karanavan of the sub-tarwad, the gift enures to the benefit of all the children. But, in the case of a gift made to one of the younger children, it is difficult to raise a presumption of that description unless accompanied by other circumstances indicating the intention of the donor. Clause 23, sub-clause (1), as drafted by the Select Committee, runs as follows:—

"Property acquired by gift or bequest by the wife or widow or child or children from the husband or father as the case may be, after Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal shares."

The presumption that is raised under the clause proposed is that the gift should, in the absence of an express recital to the contrary, belong to all the children equally. On the other hand, I would contend that, in the absence of a recital to the contrary, the presumption ought to be that the gift enures only to the party in whose favour it is made. If, there is something in the instrument of gift to indicate that the gift should belong to the children alike then I can understand that by the express provision of the gift itself all the children would be equally entitled to the gift. It is with a view to rectify and displace the presumption that is raised by the enactment of this clause

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[Mr. P. K. Narayana Pillai.]

as drafted by the Select Committee that I have sent in the amendment. My amendment on the other hand is to the effect that :—

"*Property obtained by gift or bequest from the husband or father as the case may be, by the wife, widow, child or children, as the case may be, or acquired out of property so given bequeathed or inherited from the husband or father, as the case may be, after Regulation I of 1088 came into force, shall, subject to the provisions of Chapter IV, belong to the wife or widow and each of the children in equal shares if the gift or bequest is found to have been intended to benefit the wife or widow and children equally.*"

Only if the intention of the donor has been proved or capable of being made out that the gift or bequest as the case may be is intended for the benefit of all the children, should all the children be taken as having been entitled to the property so gifted or bequeathed. Further, the clause provided by the Select Committee is open to the objection that it omits, out of the properties liable to be dealt with under the clause, properties which are acquired out of the properties inherited, gifted or bequeathed. I add them also in my amendment. To such accretions to makkathayam gift also my proposal is that the same rule should apply. As the clause stands at present, acquisitions made out of properties gifted by fathers or husbands as the case may be, would be out of the clause. It is with this view also that I move the amendment, and I recommend that it may be accepted.

MR. M. N. PILLAI (*Trivandrum*) : I beg to second the motion.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : Sir, I beg to oppose the motion. In regard to accretions or acquisitions made from properties obtained by gift from the father or the husband as the case may be, the present law is that those acquisitions will be presumed to belong to the sub-tarwad, as those acquisitions having been made from the properties gifted by the father or the husband as the case may be. Therefore, I do not think that any special mention of that is necessary in the Section, inasmuch as we do not abrogate the general law of marumakkathayam by this Regulation.

Then, in regard to the presumption, I do not know whether Mr. Narayana Pillai does not see the need for any presumption at all in such cases. Probably, what he wants is that the presumption in the case of gifts should be that the donee should take it as his own property and not as belonging to himself along with his mother, brothers and sisters. I want to ask Mr. Narayana Pillai whether he meant this.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Yes ; except in the case of the eldest child.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : You do not make any exemption here ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : No.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): So that, according to Mr. Narayana Pillai, we should start with the presumption that property obtained by gift or bequest from the father or the husband belongs to the person to whom the bequest or the gift is made and not to himself or herself along with the other persons of his thavazhee. That, I submit, is abrogating the existing law according to which the presumption is that, when a son or daughter or wife takes a gift from the father or husband, all of them take the property jointly and form a sub-tarwad.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Does the presumption arise irrespective of the child to whom the gift was made?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes; so far as the decisions go there is no difference at all, although it was doubted by certain judges. Now unless there is some real necessity for changing that law, I think it is better that we keep the presumption and legislate in accordance with it. We also make a distinction in this Section in so far as there are instruments by which a gift is created. In the case of such instruments it is provided that if those instruments expressly provide or say that the gift is intended for the special benefit of the donee, then the property will not belong to himself along with others of his thavazhee. If, on the other hand, there is no such intention expressed in the instrument of gift, the presumption will be that it is intended for all. That is the present law. That is the Section as it stood in the Nayar Regulation I of 1088, and I do not see why there should be any change in the existing law at all in regard to that. We know that very often the father makes gifts to individual children without meaning that the property should be taken by the individual children independently and meaning that it should be taken by all the children and the wife together. There are several cases of that kind having come to our notice in our experience. Therefore, probably, we may be making an invidious distinction in such cases unless there is a general presumption that, in the absence of an express provision in the document, it should not apply to all the children and the wife.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Mr. P. K. Narayana Pillai's amendment proposes two things. In the first place to regard as accretion to property—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I beg to remind Mr. Subba Aiyar that it is not only accretion but also conversion?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes. His amendment is that accretions and conversions should be included in the clause. I do not think there is any difficulty, because any accretion or conversion will be subject to the same law as the original property from which it was acquired or which has been converted. I do not think that any difficulty has arisen on that account till now, as Mr. Paramesvaran Pillai pointed out. If it is sub-tarwad property, any accretion to that tarwad property out of tarwad funds will be in the

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[Mr. P. K. Narayana Pillai.]

nature of the tarwad property itself and be subject to the same limitations and the same lines of inheritance, and to the same rule of partition or division as the case may be.

Then, the other thing that is now pointed out is that we must start with a presumption that, unless there is anything in the instrument or gift, it must be supposed that the gift was intended to the donee and the donee alone. That, I beg to say, is against the presumption on which the courts have been acting all along, and that it is against the presumption now raised by Regulation I of 1088. In other words, whenever property is given to the wife or a child, it is presumed that it goes to the wife and children, all equally, and if the donor intended that it should have a different effect he must specifically state it. In other words, in the absence of anything to the contrary it must be presumed that it goes to all equally. What my friend wants is that in the case of gifts, not of the future, but from the date of Regulation I of 1088, which are executed in the name of a particular donee, they should go to him alone and not to all equally. Now, from 1088 up to 1100 many gift deeds have been executed with the ordinary idea and presumption that, if a gift deed is executed in the name of the wife alone or a child alone it would go to the wife and children, and if such things have been acted upon, I do not know whether we will be justified in going back upon that presumption and saying now that no document can hereafter have any such presumption whatever. That may seriously affect vested rights and also parties who have acted upon that belief. Whether it is a matter that is desirable so far as future documents are concerned is a question that may well be considered by the House. But, unless serious inconvenience has resulted in the presumption that has all along been acted upon, I do not know whether we will be justified in making a departure in the law. I am, therefore, not quite in a position to see eye to eye with Mr. Narayana Pillai's amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, in spite of all the arguments advanced by my friends Mr. Parameswaran Pillai and Mr. Subba Aiyar, I am left unconvinced. For example, Mr. Subba Aiyar says that any property given to a son is now being regarded under the principles enunciated by the High Court in certain cases as property belonging to all the children. Let me raise a specific instance. Suppose, for the purpose of purchasing books, a father gives Rs. 100 to his son who is a school-going student. He converts it into books. Would it be contended that the books would belong to the sub-tarwad or the particular student? That is the question. In all these cases it will be extremely difficult to say that the property belongs to the tarwad. Or, say, just to enable one of his children, the father gives him a few rupees, to start a business. He uses the money to purchase property, and if all the other children also will claim such property as property belonging to them, it would be a position which has never been

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intended by the donor and there may be no instrument of gift with respect to the amount given. As it is in the matter of makkathayam gifts we have properties, the origin of some of which can be traced to a gift deed and the origin of others cannot always be traced to any deed or written instrument. Therefore, two sorts of gifts are in the field and about these properties what my friend Mr. Paramesvaran Pillai says is that the intention must appear from a gift deed and that unless that is forthcoming all these properties will have to be that equally among all the children. That would be a serious piece of hardship which has never been contemplated hitherto by the High Court or anybody else.

Then with respect to the presumption, my friend Mr. Subba Aiyar was telling us that whoever be the recipient of the gift property—I am now referring to the case of gifts evidenced by gift deeds as per the ruling of the High Court—all the children would share equally. I am sorry I have not come across any such sweeping decision. The question was raised pointedly in a 22 T. L. R. case where the judges themselves hesitate to raise a universal presumption of that description. In the case of the eldest son, by virtue of the provision in Section 26 of the present Regulation, certainly a presumption would arise that such properties are common. There is no such Section in Regulation I of 1088.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know whether his amendment relates to the youngest child also?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, Sir; we are providing to leave alone all the rules of marumakkathayam law not specifically dealt with here. So the presumption would arise.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know whether, as the law stands at present, a gift in favour of a wife is not considered to be a gift for the benefit of the wife, the children then living and children even to be born out of that union?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That may be.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Then how does he propose to restrict to a particular individual when the law, as it stands at present, extends the benefit of it to children still to be born?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): When the gift is in favour of a child, the presumption would depend upon circumstances. The gift may be to a junior member. No such presumption as has been contended for would arise. So, I am submitting, it is creating a hardship to the majority of people because there would be only one karanavan in a sub-tarwad and except when the gift happens to be made to the karanavan the presumption would be that the benefit is exclusively to the donee. In Regulation I of 1088 no such presumption as has been contemplated by my friend Mr. Paramesvaran Pillai is provided for. Mr. Subba Aiyar's contention that, from 1088 up to 1100, various persons have been making gifts, is as provided here, incorrect,

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[Mr. K. Parameswaran Pillai.]

In the absence of any such presumption in Regulation I of 1088, nobody would have been relying on any presumption of that description but only on those furnished by the High Court. To that extent I am prepared to go, for example, in the case of the eldest son and in the case of the wife before the birth of the children or during the minority of the children. In all these cases the intention may be more or less gathered, and I am prepared to give effect to the intention of the donor as has been provided for in the last part of my Clause as it stands. Therefore, in all these cases no hardship really arises. The hardship arises the other way in asking a donee to disprove the intention of the donor and that by reference to the terms of a deed executed by the donor himself. As I pointed out there are various gifts which are not covered by deeds in marumakkathayam tarwads, and to say that always the presumption must be regulated by the existence of a deed of gift is therefore certainly a piece of hardship. It is in view of this that I sent in this amendment. And I press it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The amendment as it stands takes you further than that.

PRESIDENT: Do you press it to a division?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes.

PRESIDENT: Mr. P. K. Narayana Pillai's amendment to Clause 23, which is really a substitution of the existing Clause 23 (1) runs as follows:—

"Property obtained by gift or bequest from the husband or father as the case may be, by the wife, widow, child or children, as the case may be, or acquired out of the property so given, bequeathed or inherited from the husband or father, as the case may be, after Regulation I of 1088 came into force, shall, subject to the provisions of Chapter IV, belong to the wife or widow and each of the children in equal shares, if the gift or bequest is found to have been intended to benefit the wife or widow and children equally."

The amendment was put to the vote of the House and declared lost.

MR. M. N. PILLAI (*Trivandrum*): Sir, I move to add after sub-Clause 23 the following:—

"*But property acquired by gift or bequest by the wife or widow or child or children, from the husband or father, as the case may be, before Regulation I of 1088 came into force, shall, if any of the children were alive at the time when Regulation I of 1088 came into operation, belong to such children and lineal decendants of predeceased daughters, sons and daughters taking the properties in equal shares.*"

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I rise to a point of order. This amendment does not come in here properly. There is one Section (Section 42) which relates specially to this matter and it

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will be more proper to bring it up at the time when that Section comes up for discussion. That Section is as follows :—

"Property acquired by gift, bequest or in any other manner from the father or husband before Regulation I of 1088 came into force, shall, for the purpose of this chapter, be treated as the tarwad property of the donees or devisees and of their thavazhee."

I think the amendment is really to that Section and therefore, may be taken up when that section comes up for discussion.

MR. M. N. PILLAI (*Trivandrum*): I have no objection to move it afterwards.

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): My amendment also relates to the very same thing.

MR. C. SANKARA MENON (*Quilon*): Sir, I beg to move to add the following as sub-clause (3) :—

"*The properties inherited under Sections 15, 16, 17, 19, 20 and 21 by the thavazhees of the mother, grandmother or great-grandmother of a Nayar male or female, shall belong to each of such members in equal shares.*"

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is already an amendment by Mr. P. K. Narayana Pillai with respect to sub-clause (2) line 9.

PRESIDENT: Mr. Narayana Pillai may first move that amendment and finish sub-clause (2).

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is only a verbal change that I propose to make in sub-clause (2).

"*The rules for the devolution and distribution of the property of an intestate as hereinafter provided shall, so far as they may be, apply to property mentioned in sub-section (1), as also to property acquired under Regulation I of 1088 and under Section 22 of this Regulation.*"

It is very difficult to refer to property which is the subject of a gift as property acquired, or property bequeathed. I would refer to such property as property 'obtained.' It is only with this object that I move to substitute the word "obtained" for the word "acquired."

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In Section 23, sub-clause (1), the expression used is "property acquired." So the word 'acquired' is necessary for the sake of uniformity.

PRESIDENT: "Acquired" is proper legal language. In sub-clause (1) the word "acquired" has already been used.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The expression is "acquired under Regulation I of 1088." With respect to property acquired under Regulation I of 1088 it may probably comprise all manner of acquisitions—even purchase.

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[Mr. P. K. Narayana Pillai.]

PRESIDENT: Yes; anything that accrues under Regulation I of 1088.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I want to know whether it will not include also purchases made when Regulation I of 1088 has been in operation.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It will include property inherited under Regulation I of 1088.

MR. P K. NARAYANA PILLAI (*Ambalapuzha*): "Inherited" would be all right, but that is not the expression. Hence, I thought the more appropriate expression would be "obtained." I leave it to the sense of the House to accept my amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I was under a slight misapprehension with respect to that. I think there is not much difference in having that word. But for purposes of uniformity I would retain the word "acquired" because in Section 23 the expression used is "acquired by gift or bequest by the wife or widow or child or children from the husband or father, as the case may be." Mr. Narayana Pillai proposed no amendment to that. Therefore, for the sake of uniformity I would retain the expression "acquired" rather than change it into "obtained."

PRESIDENT: Have you anything to say, Mr. Subba Aiyar?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Nothing.

PRESIDENT: Do you press your amendment, Mr. Narayana Pillai?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I think both the sub-clauses may be corrected.

PRESIDENT: Then what is the word to be substituted?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): 'Obtained.'

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): As regards sub-clause (1) we cannot go back upon the Section because it has already been passed by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is only a verbal alteration and we have not passed the Section as a whole.

PRESIDENT: If you cannot come to an agreement, I will put it to the vote of the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Paramesvaran Pillai is of opinion that it makes no difference. I withdraw my amendment.

The amendment was, by leave of the House, withdrawn.

The following amendment was not moved:—

MR. A. GOVINDA MENON:

Sub-clause (1). Line 3, Delete the word "unless" and substitute the words "even if."

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MR. C. SANKARA MENON (*Quilon*): I beg to move to add the following as sub-clause (3) :—

"*The properties inherited under Sections 15, 16, 17, 19, 20 and 21 by the thavazhees of the mother, grandmother or great-grandmother of a Nayar male or female, shall belong to each of such members in equal shares.*"

The object of my amendment is that the properties inherited by the marumakkathayam heirs also may be made partible. According to Sections 12 and 13 properties inherited by the makkathayam heirs—the wife and children are made partible. They take as tenants in common. There is no reason why properties inherited by the marumakkathayam heirs, that is, the brother or sister or the nephews of the acquirer, should be made tarwad property. The reasons which weighed with us in making the properties inherited by the makkathayam heirs, that is, the wife and children, partible, must weigh with us so far as these properties are also concerned. Now, Chapter VII provides for partition of the tarwad property subject only to certain restrictions. If the provision, as it is, is retained, a number of small sub-tarwads will be created with all the disadvantages of a tarwad. The object of this Regulation itself is to remedy those disadvantages. So, it seems to me, Sir, that the properties inherited by the other heirs also should be taken by them as tenants in common in equal shares. The disadvantages are various. It is not always that the properties are invested by the acquirer in immovable properties. What is left may be some investment in savings banks or in money. Now, on the death of the acquirer, all this will go only to the senior member and they may not even be available to the other sharers. Therefore, it is necessary that those properties also should be taken by this class of heirs as tenants in common. It is with that view that I move this amendment.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I oppose the amendment. In the first place, Mr. Sankara Menon is trying to take us through an unsafe road. There are, lower down in the Bill, certain Sections which deal with the question of individual partition. This House may after full deliberation accept or reject the proposal for individual partition. It has been observed by the mover of the Bill and by other gentlemen that the Bill does not do away with all the rules of marumakkathayam law. We are only changing certain aspects and making provision for new necessities which have arisen on account of the development of the marumakkathayam society. Mr. Sankara Menon would advocate the principle of individual partition with regard to property inherited by any class of heirs from a marumakkathayam family, or from the uncle or other such relations. All the property now belonging to the Nayars is inherited from some uncle or grandmother or other maternal relation. So that, if we accept Mr. Sankara Menon's amendment without creating any obstacle on its path, Mr. Sankara Menon would be able to do by a side-wind what would require very much

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[Mr. V. Subba Aiyar.]

more than a side-wind in this House in order to accept the principle of individual partition. Let us meet the question fair and square. Therefore, I oppose the amendment.

PRESIDENT: Do you accept the amendment?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I cannot accept the amendment because this Bill provides for a law of partition in regard to members belonging to tarwads and sub-tarwads, and, therefore, there is no need for importing a sub-section providing for partition in this particular case.

I recognise that there is a distinction between the amendment now proposed by Mr. Sankara Menon and the partition of tarwad properties provided for in this Bill, because in the latter case some restrictions have been placed on individual partition. Mr. Sankara Menon thinks that no restriction should be put in the way of individual partition at all in this case as the property is capable of being divided equally between makkathayam heirs who inherit in the absence of other heirs. I think there is absolutely no necessity for making any distinction between property acquired by a thavazhee by inheritance and tarwad property. Therefore, it is better to be uniform in regard to the provisions regarding all these kinds of property.

MR. C. SANKARA MENON (*Quilon*): Will it not amount to the creation of new sub-tarwads?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There is no question of creation of sub-tarwads. According to the existing provision, if a person dies, his self-acquired property devolves upon the members of his thavazhee and, in their absence, upon the members of his mother's thavazhee and so on, the nearer excluding the more remote. Therefore we are not now creating any particular kind of sub-tarwad on tarwad. The sub-tarwad is there and will be there under the existing Regulation also but for the slight change we have made in favour of children and certain other heirs.

MR. C. SANKARA MENON (*Quilon*): May I know the reason for preferring the makkathayam heirs to the other heirs?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Because we are now providing for a particular kind of devolution of property for Nayars. We are making the self-acquired and separate property of a Nayar inheritable by his widow and children if they are alive. Therefore, we made this property divisible among them. That is the only alteration that we have made in the marumakkathayam system. We have made a particular provision for partition and we have made it applicable also for the cases mentioned by Mr. Sankara Menon. No case has been made out for making a distinction in that case alone. Therefore, I am not in a position to accept Mr. Sankara Menon's amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I also oppose the amendment. The Section referred to in the amendment

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details the various persons who are entitled to inherit, but under certain contingencies, a group of persons or thavazhee, or sub-tarwad, inherits it. In such contingencies until there is a division among themselves, the tarwad as a group takes it. In other words, the share of each member will depend on the number of individuals in the thavazhee at the time the partition opens. It may be increased by the death of some of the members. What Mr. Sankara Menon wants is, the moment the thavazhee gets it, the property should be divided among the members of the thavazhee living at the time when the succession opens. That I do not think was the object of the previous Section. The previous Section has detailed the various persons entitled to inherit the property. I do not know if the object was to entitle each member to take the property individually. Of course, the rules relating to partition come under a later Section. At present, I do not think it necessary to accept Mr. Sankara Menon's amendment.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I beg to support the amendment proposed by Mr. Sankara Menon for these reasons. This deals only with the property that one has as one's self-acquired and separate property. Of course, if he had makkathayam heirs, they would divide it among themselves and each individual would be entitled to dispose of it as he likes. In the absence of one's own descendants or other lineal descendants like grandchildren or great-grandchildren, the property will go to his grandmother or great-grand-mother or other female ascendants and their thavazhee. I do not know why a restriction should be placed on one's rights of disposal of one's own individual property over which one should have absolute control, for the simple reason that one does not happen to be the lineal descendant of the deceased owner of the property. I do not see the reason why there should be such a restriction in this case alone. It has nothing to do with tarwad property. It is one's own self-acquired property. I therefore support the amendment.

MR. C. SANKARA MENON (*Quilon*): When Section 12 was introduced Mr. T. K. Velu Pillai opposed that provision and on the same principle he has opposed this amendment also. Consistency requires it.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Not merely for consistency and principle but for many vaild reasons also.

MR. C. SANKARA MENON (*Quilon*): But so far as the mover of the Bill is concerned, he has accepted Sections 12 and 13 and it appears to me that consistency at least requires that this amendment should be carried.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I point out that we make a distinction between the provision in Section 12 and that in Sections 15, 16 and 17? In the one case it is self-acquired property and in the other it is a case of thavazhee which consists of a group of persons.

MR. C. SANKARA MENON (*Quilon*): I know that. I do not raise any objection to that. Even under the marumakkathayam law, property acquired by the wife and children has been regarded as tarwad

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[Mr. C. P. Kochukunju Pillai.]

property. Makkathayam property has all along been regarded as tarwad property and some change has been made only by Regulation I of 1088. A further change is sought to be introduced by the present Bill, whereby the wife and children are entitled to inherit the whole of the self-acquired property of the husband or the father as the case may be. But so far as the marumakkathayam heirs are concerned I do not see why a distinction should be made and why the provision should be made applicable to them, particularly in view of the fact that the object aimed at by this Bill is individual partition subject to certain restrictions which probably my friend the mover of the Bill thought necessary. When even the existing tarwads are to be made available to the members individually, I do not see any reason, Sir, why he should create a new sub-tarwad and create further difficulties incidental to the joint family system which it is the obeject of the present Bill to put an end to. It would be a source of perpetual litigation and the result would be that the members of the thavazhee individually would not have the benefit of the property that the thavazhee gets. On these grounds, I commend the amendment to the House.

PRESIDENT: Have you anything to say, Mr. Subba Aiyar?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No.

The amendment was then put to the vote of the House and lost.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): Sir, I beg to move the following amendment:—

Add the following at the end of Clause 23:—

"*And such property shall also include property so acquired from the same husband or father before the date of that Regulation.*"

Sir, the object of my amendment is this. The Section, as it is, would apply only to the property acquired by the husband or the father alive on the date on which Regulation I of 1088 came into force. He might have acquired property for his wife and children even before the date on which Regulation I of 1088 came into force or after that date. The Section, as it is, does not cover properties so acquired by the husband or father before the date on which that Regulation came into force. So much so, it appears that one portion of the property acquired by the husband or father is made divisible while the other portion is made indivisible. My object is to make both the sets of property divisible. The Section reads thus:—

"(1) Property acquired by gift or bequest by the wife or widow or child or children from the husband or father as the case may be, after Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal shares.

"(2) The rules for the devolution and distribution of the property of an intestate as hereinbefore provided shall, so far as they may be, apply to property mentioned in

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Sub-Section (1) as also to property acquired under Regulation I of 1088 and under Section 22 of this Regulation."

My point is this: The husband or father who was alive on the date on which Regulation I of 1088 came into force must have given property to his wife and children before the date on which this Regulation came into force as well as after that date. The present Section covers only one set of such property and not the other. I say that it should include both sets of property.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In regard to this matter, I have to rise to a point of order. Mr. Kochukunju Pillai's amendment is consequential upon Mr. M. N. Pillai's amendment the discussion of which has been postponed.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnatur*): No, it is not so. This Section contemplates the case of makkathayam property that has come into existence after Regulation I of 1088 came into force.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That is not covered by Section 42.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnatur*): No, that is not covered by that Section. I will make myself clear. The present Section contemplates property given by the father or the husband to his wife and children after Regulation I of 1088 came into force. My point is, there was a husband or father who was alive on the date on which this Regulation came into force. I submit that that very same husband or father might have acquired property for his wife and children both before the date of this Regulation and also after the date on which the Regulation came into force.

PRESIDENT: Do you mean to say that the husband or the father would have gifted property to the wife or children?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnatur*): Yes, Sir.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I ask Mr. Kochukunju Pillai whether it is not his intention that the marriage should be subsisting on the date on which the Regulation came into force?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnatur*): Yes.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The amendment does not say that.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnatur*): The Section itself relates to marriages subsisting on the date of the passing of the Regulation.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Is it confined to gifts made prior to the date of the Nayar Regulation, by the father or the husband who was alive at the date of the passing of the Regulation? It appears to me that it would mean the same thing as Section 42.

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[Mr. K. Parameswaran Pillai.]

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnatur*): Certainly not; it relates to property gifted by the father or the husband before the date on which the Regulation came into force.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): He does not make any distinction in his amendment, in order that the law may apply to a gift made before the passing of the Regulation. He does not say that.

PRESIDENT: Even assuming that the husband or the father was alive on the date on which Regulation I of 1088 came into force, why should not the principle of devolution enunciated in the Section apply?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnatur*): This is my object; you may draft it in any way you like.

PRESIDENT: You must obtain my permission before your amendment is amended.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I wish to ask whether it would not be desirable to make the point clear, and to add the words 'after the Regulation came into force, provided the marriage was subsisting on the date on which Regulation I of 1088 came into force'.

PRESIDENT: 'Provided the husband or father was alive on the date on which Regulation I of 1088 came into force', I think that would do.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): No, the marriage might be dissolved.

PRESIDENT: How can we introduce the question of marriage in this Section? That would not be proper; for we do not speak of marriage in any of the previous sections.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, there is the general Section 44 which refers to this question.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think the amendment will lead to some difficulty if we introduce it here.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Section 44 reads thus:

"Nothing in this Section shall (*a*) affect the existing rules of marumakkathayam law, custom or usage except to the extent hereinbefore expressly provided for; or (*b*) confer any rights on the party to a marriage dissolved before Regulation I of 1088 came into force."

That limits the operation of this Section.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I think, Sir, the whole question may be discussed when we go to Section 42 which relates to acquisitions made prior to the passing of Regulation I of 1088. Therefore, with your permission, I would request Mr. Kochukunju Pillai

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to postpone the consideration of his amendment till we come to Section 42.

PRESIDENT: I think that will be the proper time for discussing this amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I do not think this amendment can be taken up for consideration when we go to Section 42.

PRESIDENT: What do you say Mr. Kochukunju Pillai? I think it could be considered when we come to Section 42. If you like, you may move your amendment now and take your chance.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): I have no objection to postpone it.

The Council agreed to the proposal to postpone the discussion of the amendment.

Clause 24.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The consideration of Clause 24 also may be taken up along with Clause 22, because Clause 24 speaks of Clause 22.

PRESIDENT: Yes, I think that would be the proper course. But there must be a motion.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I move that Clause 24 be taken up for discussion after Clause 22 is disposed of.

The motion was accepted by the House.

Clause 25.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I move that, in Section 25, the word 'Nayar' be substituted for the word 'Hindu'.

It is stated in the Section that Sections 5, 6 and 7 of the Wills Regulation are hereby repealed.

PRESIDENT: Will you kindly read these Sections from the Wills Regulation for the information of the House?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*):

"5 (*a*) No bequest made by a makkathayam Hindu testator having children, wife, father, mother or undivided brothers who would otherwise inherit the property shall take effect as against such children, wife, father, mother or brothers, to a larger extent than one-half of the self-acquired property possessed by such testator at the time of his death and one-half of his separate property other than that which he got for his share of paternal property at a partition with his own son, grandson, great-grandson or father.

"(*b*) No bequest made by a makkathayam Hindu testatrix having children who would otherwise inherit her property shall take effect as against such children to a larger extent than one-half of the property possessed by her at the time of her death.

"*Explanation*:—The word 'children' in clauses (*a*) and (*b*) includes grandsons and great grandsons in the direct lineal descent in the male or female line.

"6. No bequest made by a marumakkathayam Hindu having near relations shall take effect as against such relations to a larger extent than one-half of the self-acquired and separate property possessed by the testator or testatrix at the time of his or her death.

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[Mr. T. K. Velu Pillai.]

'*Explanation*:—The expression 'near relations' means brothers, sisters, sisters' children, mother, mothers' brothers, mothers' sisters and the children of such sisters; and in the case of a testatrix, her children, the children of her daughter and daughter's daughter, and the other relations above specified.

"7. In the case of Nambudiris, Pottis and others who follow the impartible joint family system no bequest shall take effect as against a co-parcener or parceners to a larger extent than one-half of the self-acquired and separate property possessed by the testator at the time of his death."

These Sections impose certain restrictions on the testamentary power and in the interest of certain families, and in the interest of society as a whole, the legislature has imposed these restrictions. It was discussed yesterday, Sir, on the question of executing wills, that there was a difference of opinion. Whatever we may say of individual liberty of action, so far as testamentary disposition is concerned, there is yet another view of the question which we should not lose sight of. At the present day, several leading economists do hold the view, that one should not be allowed an unrestricted power of making wills. I am not now going into the merits of that question. I too do not see why, when other communities have all secured full rights of testation, some *Hindus* and some *marumakkathayees* alone should be placed under this restriction. I am moving the amendment for a different reason altogether. This House is now considering the Nayar Regulation Amendment Bill. In Section 25 of the Bill as revised by the Select Committee we find it stated as follows:

"Any Hindu may dispose of by will the whole of his or her self-acquired or separate property.

"Sections 5, 6 and 7 of Regulation VI of 1074 are hereby repealed."

We are now considering questions affecting the Nayar community and members of certain other communities who have marital relations with Nayars. The Wills Regulation applies to more communities than that. There are several people who are governed by makkathayam law; there are also several others governed by marumakkathayam law. There seems to be no reason why the Wills Regulation should be modified in order to affect the rights of all these people or to disappoint the expectations entertained by the people of these communities, because, according to the Wills Regulation, a person can dispose of only one-half of his or her self-acquired or separate property. My objection is that this House is not competent to delete these Clauses of the Wills Regulation which has got a wider scope than the Nayar Regulation Amendment Bill, which relates only to Nayars and such of the non-Nayars as have marital relations with Nayars. I do not think we would be justified in removing the Section altogether, thereby affecting many other communities. The change may be prejudicial or beneficial to those communities. But I do not think we have got the necessary jurisdiction in the matter, and I press upon the attention of this House the point that an attempt of this nature to override the law without conforming to the methods of doing it, is not at all justifiable. Therefore, I propose that

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the word 'Nayar' may be inserted instead of the word 'Hindu' in Section 25. With the permission of the President, I would also add the words "Nayar or non-Nayar having marital relation with Nayar females."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is the amendment which stands in the name of Mr. Sankara Menon. Is Mr. Velu Pillai prepared to accept it? Mr. Sankara Menon's amendment runs as follows:

"*Insert after 'Hindu' the 'words between whom and a Nayar female conjugal union is permitted according to recognised social custom and usage'.*"

PRESIDENT: Mr. Velu Pillai's amendment is wider still.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have already moved this amendment. I shall consider that after discussing this amendment.

PRESIDENT: Will you accept his language or do you prefer your own language? There is difference between the two.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am sorry, Sir, I cannot accept that amendment. I got the Section read with Mr. Sankara Menon's amendment and it contemplates cases in which the non-Nayar is allowed to exercise testamentary authority, provided he conforms to the rules which make marriages possible between him and the Nayar community. I may mean a Nambudiri or a Kshatriya, or any of those Hindus, who marry Nayar females, may have the power of testamentary disposition. My point is this, *viz.* that, when men may have that testamentary capacity, no fetters should be placed until the *factum* of marriage with a Nayar female is known. Otherwise there will be no significance in that, for although a man has to prove that he belongs to one of these communities which can have marital relations with Nayar females, he cannot will away his property until marriage with a Nayar female is proved. That is the amendment of Mr. Sankara Menon. I am unable to accept the amendment of Mr. Sankara Menon.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I would like to hear Mr. Velu Pillai's amendment.

PRESIDENT: There is also the case of a man outside the community and yet having marital relations with Nayars.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*) Any non-Nayar Hindu.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): 'Non-Nayar Hindu,'—will he accept that wording?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am not for it. I will put it as non-Nayar who has marital relations. I would only have non-Nayar', because it applies only to non-Nayar Hindus of certain castes who are allowed to marry Nayar females. The rule is clear, and the custom is definite. So this is my amendment, and if my friends convince me that there is a better way of putting it, I am willing to accept it.

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[Mr. V. Subba Aiyar.]

PRESIDENT: Your amendment reads as follows: "Any Nayar or non-Nayar male having marital relations with Nayar females."

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I know whether Nayars are at present precluded from willing away the whole of their self-acquired property?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If that is allowed, then there will be much trouble and so many difficulties. We are not now legislating for the sake of the Nayar community alone but for certain non-Nayars as well. I suppose I have made my position clear.

MR. M. N. PILLAI (*Trivandrum*): I second it.

PRESIDENT: Mr. Velu Pillai's amendment runs as follows:—

"Substitute for the word 'Hindu' in line 1, Clause 25, the words: 'any Nayar or non-Nayar having marital relations with Nayar females'."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to oppose the amendment. Mr. Velu Pillai wants that other communities should not be jeopardized by such a sweeping amendment as the one before the Council. I think in so doing he is rather selfish. I will deal with the points he has raised, in the order in which he has dealt with them.

The first point that he dealt with was that this House has no jurisdiction whatsoever in a Nayar Regulation to repeal some of the Sections of the Wills Regulation which applies to other Hindus as well. My simple answer is this. The Council has got a power to repeal any part of one Regulation by another Regulation. By amending a Section in the Civil Procedure Code, we may repeal the provisions of the Limitation Regulation. And I believe my friend knows the practice in British India also. We may repeal one Regulation or amend parts of it by ever so many Regulations.

PRESIDENT: Was this Wills Regulation passed by the Legislative Council?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes Sir. So I do not think that the members of this Council will seriously think that they have not the power to do it and that we are not justified in doing so. With reference to that, I may observe that, if you go to the history of the Wills Regulation, it will be found that the Council first settled it with the power of disposition absolutely for every person, but ultimately it so happened—I do not want to give the details of the Bill—that it was dangerous for the Hindu community to be empowered with absolute power of disposition because they might disinherit their very near relations. It was during the time of the late Dewan Mr. Sankarasubba Aiyar, at whose instance the Wills Regulation

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was passed. What is the effect of it now? Since then we have passed the Nayar Regulation wherein all Nayars are given absolute power of willing away their whole property in spite of the Wills Regulation. We have a Christian Succession Regulation in which the principle is accepted that every Christian is at liberty to will away the whole of his property. We have the Ezhava Regulation in which we have the absolute power of disposition given to Ezhavas, and in the Nanjinad Vellala Bill the principle has been accepted by the Council and by the Select Committee. So then what are the communities that are now left? There are very few communities who are following Makkathayam or Marumakkathayam who have not the power of absolute power of disposition.

Now, Sir, Mr. Sankara Menon would have it for any Nayar or non-Nayar who is permitted to have marital relations with a Nayar female. I take it that a Brahmin may do it, a Kshatriya may do it, and other communities having marital relations may do it. The court will have to go into the question as to what communities are at liberty to contract marital relations with Nayars, and then decide whether a person's powers of disposition are absolute or limited. That is one difficulty so far as Mr. Sankara Menon's amendment is concerned. With reference to Mr. T. K. Velu Pillai's amendment, he wants to have it for a person having marital relationship with a Nayar female. That means, Sir, that before he marries a Nayar he has no absolute power of disposition. But immediately he marries a Nayar wife he has such power of disposition. The moment he divorces her, he ceases to have the power. I do not think we should have these absurdities and difficulties. The safest thing will be to amend the Section of the Wills Regulation and empower other Hindus as well to will away the whole of their property, and I daresay my friend, Mr. T. K. Velu Pillai, will be aware that, so far as the non-Nayars are concerned, the power of disposition has to be conferred. So I do not know what difficulty there will be if the Nayars too are given that power. The Ezhavas are enjoying that privilege. The Nanjinad Vellalas are going to have the privilege, and the Christians have been allowed the same.

MR. C. SANKARA MENON (*Quilon*): May I know whether this Regulation applies only to such non-Nayars as have marital relations with Nayars?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes.

MR. C. SANKARA MENON (*Quilon*): Therefore the word 'Hindu' applies to all.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is why there is a paragraph which says "Sections 5, 6, and 7 of the Wills Regulation are hereby repealed".

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): How does that affect the amendment of Mr. Sankara Menon?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): All the three Sections of the Wills Regulation are hereby repealed. So this Section will apply to all Hindus.

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[Mr. P. K. Narayana Pillai.]

PRESIDENT: Absolutely without any reservation.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether Mr. Subba Aiyar is aware that we are legislating here only for such persons as have marital relations with Nayars?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Nayars are Hindus and there are also other communities included under the term Hindu. That is why we have taken care to omit the Kshatriya, the Pandi Vellala and such other communities who are also Hindus. Cases disputing the right of a person to marry a Nayar wife may arise in the course of the administration of the law.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether, instead of effecting a very important change in the law of the Hindus as laid down in the Wills Regulation by a side issue, it will not be more desirable to do so by bringing in a separate Bill to repeal the Wills Regulation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If the member in charge of this Bill will delete Section 22 and bring in a Civil Marriage Bill empowering intermarriages, certainly I shall accede to the wishes of my friend.

Rao Bahadur K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The legal difficulty apprehended by my friend Mr. Velu Pillai—

PRESIDENT: By Mr. Paramesvaran Pillai.

Rao Bahadur K. A. KRISHNA AIYANAGR (*Nominated*) (*Deputy President*): —and emphasised by Mr. Velu Pillai was "This is a Nayar Regulation; why, by a side issue, do you want to disenfranchise all non-Nayar Hindus?" The amendment as it was originally submitted by Mr. Velu Pillai was only "substitute 'Nayar', for the word 'Hindu'." If that is pressed no testamentary power of disposition is given to non-Nayars. But he made some alterations later on and said 'non-Nayars having marital relations with the Nayar community'. Let us examine the implications of that. Suppose a non Nayar's Nayar wife is dead, but he has children by the Nayar wife. He has no power to make a testamentary disposition. I do not think that my friend contemplates such an extreme case under which one particular section of the community alone is seriously handicapped. In the course of the discussion yesterday, it was thrown at our face by member after member that the present Regulation proposes to give absolute power of disposition. Unless, Sir, you think as a question of order that this Council is not competent to discuss the testamentary capacity of non-Nayars, it is open to this Council to repeal the provisions of other statutes relating to any class or classes of people included in the Hindu Wills Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether it is the Hindu Wills Regulation or the Wills Regulation of Travancore?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Wills Regulation.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): As my friend puts it, the Wills Regulation of Travancore stands practically repealed except in so far as it relates to non-Nayar Hindus. Advantage is taken of the present opportunity to strike the fetters of the non-Nayar Hindu communities and also to give them exactly the same powers as those conferred on the Nayar, the Christian and the Nanjinad Vellala communities, to place them on a par with the rest and give them a statutary recognition. All that is put forward is the exclusive right of every individual to deal with his self-acquisition before his death. That question was discussed at great length and a conclusion was reached by the Select Committee. The technical grounds put forward by my friend, should not deter us from conferring testamentary power on non-Nayar Hindus. There is no use in telling us that we have got the capacity and at the same time telling us that we can exercise it under certain conditions, that is, on the existence of a Nayar wife. It is only when he marries a Nayar wife that he can dispose of his property. This is not consistent with modern ideas. I, therefore, oppose Mr. Velu Pillai's amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have great pleasure in supporting Mr. Velu Pillai's amendment. The original amendment of Mr. Velu Pillai runs as follows:

"In Clause 25, line 1, substitute the word 'Nayar' for Hindu'."

Mr. Subba Aiyar pointed out one difficulty in the position of Mr. Velu Pillai. Take the case of a non-Nayar Hindu who may contract marital relations with a Nayar female. As Mr. Subba Aiyar pointed out, he may have three different testamentary phases during his life time, if Mr. Velu Pillai's amendment is accepted. Before his marriage with a Nayar female, he will have only power to will away half of his self-acquisition under the Wills Regulation. But when he contracts a marriage with a Nayar female, he will have the full power to dispose of his property during the subsistence of that marriage. Then, if he divorces his wife, or she dies, his testamentary power will be reduced again to, one-half. These three phases he may have to go through. But this imaginary bobbing up and down in the testamentary capacity is a difficulty arising only in theory and not in practice. Whatever difficulties a man may be pictured to undergo in our imagination, he is at liberty to change the will as he goes on. And the will comes into operation only after his death.

PRESIDENT: If the Nayar wife is dead, and the children are alive, to what share are the children entitled?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): They will get only a half of his property.

PRESIDENT: Then the Nayar children will lose the other half.

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[Mr. V. Subba Aiyar.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The difficulty contemplated is not a real one. A man is at liberty to change his will as he goes on. With respect to the question whether non-Nayars should have full testamentary power or not, when that question was brought up yesterday, the Deputy President was good enough to remind this House that, so far as the Wills Regulation is concerned, the non-Nayar Hindus do not take much advantage of it as they are labouring under ominous superstition.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): He never distinguished non-Nayar Hindus.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Including Hindus as a whole class, it was pointed out that it would not prove advantageous to them, since the execution of a will is associated with forebodings of approaching death. So that, it was pointed out that the existence of the powers of testamentary succession is absolutely of no avail and my arguments relating to powers of testamentary disposition were poohpoohed by Mr. Krishna Aiyangar. It is a strange thing that he now comes before the House and says—

PRESIDENT: I do not think that he said that your argument has no force.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He said it was no argument, if I recollect correctly. Strangely, presentiments in human nature do exist, and this has been very grimly represented by the Deputy President. So I am submitting that if we are to adhere to yesterday's argument, it is not the demand of the Hindu community as a whole that the testamentary power should be widened. The only question is whether the wisdom of the legislature should not be taken into consideration. As to that question, I will draw the attention of the House to the tendency of the legislatures elsewhere. For example, referring to one of the recent colonial measures, I may draw the attention of the House to the Family Protection Amendment Act of 1921 passed by the New Zealand legislature, where the State has been given the necessary power to interfere with dispositions under wills which tend to defeat the legitimate rights and demands of one's family. In the case of disposition under wills there is a very great disadvantage that a person may deprive one's family of all the necessary means of subsistence and defeat his legal liabilities by the will he executes. Hence in certain places legislatures are interfering with this discretion. Such being the case, it is a legitimate question for this House to consider whether it shall be justified in loosening the existing fetters.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I ask whether the policy adopted by the New Zealand Legislature should not apply to the Nayars also?

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am only at the amendment of Mr. Velu Pillai at present. His amendment is to the effect that the expression 'Hindu' should be deleted and the expression 'Nayar' should be retained. That is all the question. And the question referred to by Mr. Subba Aiyar, I think, is a wider question, and I shall speak on it when it is before the House. With these words, I support Mr. Velu Pillai's amendment.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Sir, Mr. Velu Pillai's argument may be summed up in one sentence. A non-Nayar Hindu for the purpose of absolute disposition of property should marry a Nayar female. Mr. P. K. Narayana Pillai says that to effectuate it he must die during the continuance of the marriage.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I also oppose the amendment brought forward by Mr. Velu Pillai. Mr. Velu Pillai's objections to the Section as it now stands are mainly two. In the fist place, he doubts the competency of this Council to amend the Wills Regulation, which relates to communities other than Nayars, in a Regulation intended to regulate the devolution of property of Nayars. Secondly, he thinks that, even if this Council is competent, this is not the proper occasion in which the Wills Regulation should be repealed or amended. In regard to the first objection, which relates to the competency of legislating for Hindus in regard to their power of testament, Mr. Subba Aiyar has given an effective answer. He says that there have been ever so many precedents and that there is absolutely no objection to have this considered. So I do not see why we should not do so at the present time. There is no doubt that a real need has arisen. When we provide under Section 22 of the Regulation that either the whole or a portion of the self-acquired property of a non-Nayar Hindu having marital relations with a Nayar female should devolve upon his Nayar wife and children, the need has arisen, so that, if he likes, he might avoid being bound by this Regulation. The next question is, even if there is a need, should we not confine the amendment to that limit? There is an obvious absurdity in doing that. For in such a case when a question arises whether a particular Hindu is entitled to make a will it will have to be decided by reference to the point as to whether he is capable of marrying a Nayar girl.

Secondly, the Hindus will be divided into two classes—those having full powers of testament and those not having full testamentary powers. In order to avoid these difficulties it is better that we invest the whole community with full testamentary powers. Now, in doing so we shall not be going out of the way. In British India full testamentary power has been recognised in the case of Hindus several years ago. I find that in 1074 when the Wills Regulation was being discussed in the Council, it was recognised that the Hindus may have testamentary power on the lines of the Wills Regulation, so that the Nambudiris and other Brahmins in Malabar who may have marital relations with Nayars in Travancore may be ruled by that law. I am just reminded by Mr. Sankara Menon that although there is no statute

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in Cochin, the rulings of the Courts are to the effect that every Hindu possesses full testamentary power. It is only by a mere accident that we have not that power here. We are only correcting now a mistake so that there cannot be any doubt that this Regulation ought to have been brought long ago. This opportunity, *i. e.*, the passing of the Nayar Regulation Amendment Bill is availed of for the purpose of bringing forward this amendment. It is defensible on principle; there is no doubt about that. It is intended for a community other than Nayars. And as far as I can see the members of the Hindu communities do not object to it. They have expressed that they are willing to be governed by this. I therefore oppose Mr. Velu Pillai's amendment.

MR. C. SANKARA MENON (*Quilon*): When I read the amendment along with the report of the Select Committee, I entertained a doubt whether the term 'Hindu' applies to all Hindus or only to such of the non-Nayars as shall have marital relations with Nayar females. As Section 1 expressly says, the Regulation applies only to Nayars and such of the non-Nayars as shall have marital relations with Nayar females. Therefore in order to avoid the possible interpretation of the meaning of the word 'Hindu' as applying only to Nayars and as applying to other Hindus also, I sent in my amendment. The doubt that I entertained is now cleared by the explanation of Mr. Subba Aiyar that the term is intended to apply to all Hindus whether they shall have marital relation with Nayars or not. If so, Clause 2 of Section 1 requires amendment. If this Section applies to all Hindus, the Regulation so far as Section 1 is concerned must be made applicable to all Hindus whether they are Nayar Hindus or non-Nayar Hindus who shall have marital relations with other Hindus. Therefore I feel considerable doubt whether this Council is competent to amend the Wills Regulation. The provisions of the other Regulation cannot be altered when we are dealing with the Nayar Regulation. We are providing testamentary powers to a certain class of people. Except in so far as it affects these people, the Wills Regulation cannot be considered. It seems to me therefore that the amendment now proposed is necessary.

MR. A. HOOGEWERF (*Nominated*): Are we not asking the non-Nayar husband to give half of the self-acquired property to his Nayar wife and children?

MR. C. SANKARA MENON (*Quilon*): We are legislating for them also, but not for other classes of Hindus. I say, our Regulation should be restricted to apply to such class of Nayars and non-Nayars as are, according to the custom of the communities, permitted to marry Nayar females.

MR. A. HOOGEWERF (*Nominated*): Who are the other classes of Hindus?

MR. C. SANKARA MENON (*Quilon*): There are many in Travancore. From Konkanis downwards there are various classes who cannot marry Nayars. Whether this Section can be made applicable in the presence of Clause 2 of Section 1, is doubtful. I support Mr. Velu Pillai.

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MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I have great pleasure in opposing the amendment of Mr. Velu Pillai. We are having complete individual liberty in the matter of the Nayar Regulation. It is not for those who want monogamy and individual partition to say that other classes of Hindus should not receive equal treatment. (Mr. A. Hoogewerf: *Hear, hear.*) Of course the treatment they said yesterday they would give to the Nayar wife and children was not the kind of treatment that I would permit. We are not considering in a Bill like this whether we ought to be, as far as possible, lenient towards the non-Nayars. I, therefore, fully approve of the provisions contained in the Select Committee's Report and oppose Mr. Velu Pillai's amendment with as much vehemence as I can command.

MR. A. HOOGEWERF (*Nominated*): Sir, I support Mr. Govinda Menon and oppose Mr. Velu Pillai's amendment. Mr. Krishna Aiyangar might have been saying many things yesterday, but we have to deal only with what he was saying to-day. (*Laughter.*) I do not see eye to eye with him on that matter. It is very unjust when we are pleading for the equality of treatment to the Nayar wife that inequality of treatment should be accorded to the non-Nayar wife. Therefore I strongly object to the amendment.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I support the amendment of Mr. Velu Pillai. One of the arguments against Mr. Velu Pillai's amendment was whether we were competent to cancel the Wills Regulation by a clause in the Nayar Regulation Amendment Bill? The answer was that this House was competent to pass any legislation which it thought fit. I agree with my friend Mr. Subba Aiyar in saying that, within certain limits and procedures prescribed, it will be competent for us to pass any legislation that we please. I think it may be proper on our part to cancel the Wills Regulation so far as the Nayar Regulation is concerned, but I doubt whether it will be proper on our part to go beyond that.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): The amendment is only with respect to certain clauses.

MR. JOSEPH PANJIKARAN (*Shertallai*): Even in regard to certain clauses the parties may, under this Regulation, say that injustice is being done. I perfectly appreciate the difficulties pointed out by Mr. Krishna Aiyangar. His question was "What is to be done by the non-Nayar husband of a Nayar female who during the continuance of the marriage has the right of testamentary disposition, and what is his position after the death of the wife?" That is a pertinent question. My only answer is that the amendment should be so worded as to suit such a case also. Instead of doing that—

MR. N. KUMARAN (*Nominated*): May I ask if the difficulty would not be removed by marrying another girl?

MR. JOSEPH PANJIKARAN (*Shertallai*): It is for the non-Nayar to say whether he would marry another girl and remove the difficulty.

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[Mr. Joseph Panjikaran.]

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I ask Mr. Panjikaran whether he is for enlarging or for diminishing the testamentary power?

MR. JOSEPH PANJIKARAN (*Shertallai*): The question whether I am for changing the testamentary power does not arise now. We are now at the Nayar Regulation Amendment Bill. The only question before the House is whether the Hindu may dispose of by will the whole of his self-acquired or separate property. If he wants to say "we will have the power for testamentary disposition extended to all manner of people", my only answer is, that there will be no harm. But the question before the House is, are we right in imposing restrictions on Hindus generally as to their power of testamentary disposition? So far as my friend Mr. Subba Aiyar's argument is concerned, I would point out to him that any legislation to be admitted into this House will have to be published in the *Gazette*; it will have to be generally discussed in this House; and if the needs of the case require it, it will have to be referred to the Select Committee and again republished in the *Gazette*. I ask, so far as this is concerned, whether all these formalities were gone through.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): The Select Committee's report was published in the *Gazette*.

MR. JOSEPH PANJIKARAN (*Shertallai*): When the Bill was introduced, it did not contain a clause for cancelling all these Sections of the Wills Regulation.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May not the same thing be said about non-Nayars who were not originally included in the Bill?

MR. JOSEPH PANJIKARAN (*Shertallai*): But there was another clause in the Regulation itself which went to show that the Regulation was meant not only for Nayars but also for non-Nayars who are having marital relations with Nayars.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I ask whether Mr. Panjikaran has heard of any instance of a Hindu objecting to this?

MR. JOSEPH PANJIKARAN (*Shertallai*): That is not the case. So far as the testamentary power is concerned, it may be well and good to have the powers. I ask, if it may be good to have the powers of a giant, and to use it as a giant. Will it be good to extend the operation of the Regulation to Kanians, Asaris, and Pusaris who also come under the class of Hindus? Would it not be defeating the expectations entertained for a long time. It should be the duty of the subjects of Her Highness the Maha Rani Regent to obey if a Regulation like that is passed. If my friend Mr. Subba Aiyar is very particular to have the testamentary power, I have no objection to it. It is not through the Nayar Regulation Amendment Bill that that power

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should be given. The Regulation may be published and the question discussed, but I think this would not be the proper way of passing that Regulation. So far as Mr. Krishna Aiyangar's argument is concerned, if suitable amendments are made in Mr. Velu Pillai's amendment so as to make it clear whether it applies to a Nayar or a non-Nayar who has marital relations or who may have had marital relations—I think some such amendment will be enough. I do not want that the non-Nayar should be in any awkward position. The only condition is that what we do must be proper. We should not legislate behind their back although we may have the power to do so.

MR. T. LAKSHMANA PILLAI (*Nomindted*): Sir, I agree with Mr. Panjikaran. The question here is what powers should devolve on a non-Nayar Hindu to enable him to make the necessary arrangements for the devolution of his property. That is the only question.

MR. A. HOOGEWERF (*Nominated*): I cannot hear.

MR. T. LAKSHMANA PILLAI (*Nominated*): The only question, so far as we are concerned at present, is what powers should be given to the non-Nayar Hindu so as to enable him to make adequate provision for his Nayar wife and children. The purpose of this Regulation is to make arrangements for the Nayar wives alone. Therefore, it seems to me that it will be out of place to deal with the general question of testamentary power of all Hindus. That is a question which will come up suitably for consideration only in a Regulation which is particularly meant for that.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I would like to make a few observations on this amendment. My only point is this. Mr. Subba Aiyar and Mr. Krishna Aiyangar were very particular that that class of Hindus, at any rate, which by custom or usage is permitted to have marital relations with Nayars, might be given the freedom to dispose of their entire property by will. In respect of other classes Mr. Subba Aiyar stated that it would not be right to give that right without their attention having been particularly drawn to that matter. We shall be justified in repealing the measure in respect of all classes of Hindus only by a separate Bill. It was stated that the Select Committee's Report was published in the *Gazette*. No doubt it was so. And that class of Hindus which by custom and usage are permitted to marry Nayar females must certainly have gone through the provisions of the Select Committe. Since they themselves did not object and since they do want the power of disposal of property, I think that it must be restricted only to those non-Nayars who have their wives alive, and to all such people as are permitted by custom and usage to have marital relations with Nayar females. But with regard to the other classes of Hindus, I think we will be taking them all by surprise. For aught we know, our own sentiments may be in one direction and their sentiments may be in another direction. It is our paramount duty to consider the sentiments of that particular class of people which forms the bulk of the population. We are legislating forthwith without consulting and ascertaining their wishes. So that there can be no objection to granting

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absolute power of disposal to that class of Hindus who have been permitted by custom and usage to have marital relations with Nayar females.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask if the question whether a particular Hindu, in Travancore, has got testamentary power or not, is to be decided by the question whether he is entitled to marry a Nayar girl or not?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That is exactly what I say. Unfortunately we are not dealing with a Bill to repeal the Wills Regulation. If we are here to discuss a Bill to repeal the Wills Regulation introduced either by Mr. Paramesvaran Pillai or Mr. Subba Aiyar, then of course it will be proper to do it on its merits. There is no such thing—no notice is given to the other class of Hindus—under the procedure to be adopted in this House for legislation. Here, by introducing a provision under a Regulation regulating the usages and customs of such non-Nayars as may have such marital relations with Nayar females, you are legislating for a very large section of people who do not come under the Nayar Regulation. Therefore my main objection is with respect to that class of people who were not given notice that such a vast change as is now contemplated under the Nayar Regulation Amendment Bill is going to be made. Our purpose will be served if we pass a Regulation in respect of all classes who are permitted by custom and usage to have marital relations with Nayar females. It should be a case of particular classes of Hindus being exempted from the operation of the Hindu Wills Regulation, but not all classes of people.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, this is one of those surprises which I did not anticipate. But the terrors that Mr. Subba Aiyar and others have conjured up will never succeed in frightening me (*laughter*), and I trust they will not frighten the House either. I am not surprised that a layman like Mr. Hoogewerf should take that attitude with regard to this question. But I am surprised that Mr. Govinda Menon should do so. Sir, I am still more surprised when I find Messrs. Krishna Aiyangar, Paramesvaran Pillai and Subba Aiyar, the Law Member of this House, accepting a position which is manifestly untenable and clearly wrong. I am of opinion, Sir, that form is a very important thing in legislation, and as an eminent author has put it: "Form is the twin sister of liberty." Mr. Subba Aiyar, the Law Member, with the experience of several years in the Bar and with sufficient experience in the Legislative Council, must have certainly mastered the leading principles of law. But on questions of constitutional law this is not the first time that he makes a mistake. I can forgive a man for ignorance, I can forgive a man for not adverting to all aspects of a question. But I cannot forgive any for such failure of memory. When Mr. Subba Aiyar thought of doing the very best he could to the Nayar Regulation by proposing the appointment of my friend on the right-hand side as a member of the Select Committee, without giving notice of the meeting to some member, it was I who raised

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a technical difficulty, and I observed that, because it was the budget session and the other gentlemen who have been co-opted for the purposes of the Nayar Regulation Amendment Bill were not summoned to the Council, it would be wrong to do anything with regard to the Nayar Bill then. Mr. Subba Aiyar was not able to maintain his own position, and the President ruled that I was in the right and that Mr. Subba Aiyar was in the wrong. If, Sir, in ignorance of constitutional procedure and legislative principles, the Law member of the House remembered this fact, he would not have made the present mistake. I do not absolve the other gentelmen who took that position. But I am only referring to Mr. Subba Aiyar as he ought to be the custodian of the rights and privileges of this House. And as he appears to have thrown his lot with others equally in the wrong, I have singled him for challenge.

The real question to be considered consists in a difference between the form and the merits. With regard to the form there are elaborate rules printed in the Manual which Government have given to every member; and if any member has not read it, it is his own mistake. There are elaborate rules of procedure for sending a Bill to the Select Committee, for the publication of Bills and other forms which Mr. Subba Aiyar ought to know, however indifferent he may be to them personally. I cannot view with indifference the curious argument that these forms are not necessary for the conduct of business in a legislative assembly. If the Bill is intended to affect all communities, all those communities should have been given notice of it. You should not have called it 'The Nayar Regulation Amendment Bill,' but 'The Nayar Regulation Amendment Bill and The Wills Regulation Amendment Bill'. Why should a Hindu and a Mahomedan who have nothing to do with the marriage of Nayars advert to this question? There are people who are indifferent to the Nayar Regulation Amendment Bill, not because they dislike the Nayars, but because they know that the Nayars can take care of themselves. There are people who think that non-Nayars having marital relations with Nayar females may also be able to take care of themselves. And we had a spectacular display yesterday of the non-Nayar position which was sufficiently explained with great and convincing details by Mr. Subba Aiyar. Yesterday, Mr. Subba Aiyar said that this Council has no jurisdiction to do anything which will affect the non-Nayar communities. To-day, he says that the proceedings of the Council will not be affected by any want of jursidiction. I think Mr. Subba Aiyar is saying all this from a remote memory of the statement that the House of Commons can do anything except making a man a woman. The Law member may have a right probably to exceed the power of the House of Commons in that matter, because he might by way of a provision in the law be importing, in the provisions of the Nayar Regulation Amendment Bill, some provision with regard to the capacity of permanence in the matter of creation. Mr. Subba Aiyar will still hold that it is the correct procedure and that, so long as there is the creative power of Brahma, nobody is affected. Sir, arguments like this from that side of the House especially, I cannot treat with indifference. If non-officials or officials, whoever they be, come here and say

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"There is a bad defect in a particular law, and so let us sit down at once and let us vote on it and pass it; and we need not take notice of forms and formalities", that would be an absurd position to take. I am borrowing the words of a gentleman who has talked on my motion. Otherwise I would not have used the word 'absurd'. Seeing that elderly people objecting to the amendment have used the expression, I am borrowing that and giving it back to them.

The merits of the amendment also require a reply. Mr. Krishna Aiyar very dexterously pointed out that the meaning of the amendment was that, if any non-Nayar want to have a possession of testamentary capacity, he had forthwith to marry a Nayar woman, insinuating perhaps that that is the object with which I proposed this amendment. But with regard to that, Sir, I can effectively silence even Mr. Krishna Aiyar when I read out to him a few sentences from the Memorandum on the Select Committee's report which I have recorded.

"I am afraid that, in the circumstances set forth above, any attempt to saddle the non-Nayar parties to existing marriages with new-fangled obligations will prove utterly infructuous and manifestly abortive. The question will assume a different aspect if the rule of inheritance is ntended to regulate future marriages alone. Perhaps this vexed question upon which we have been lashed round and round will not obsess future legislators, because signs are distinctly visible which go to press upon us the hard fact that endogamy is the favourite ideal of the Brahmins, Kshatriyas and other communities whose members have hitherto been anxious to marry Nayar females either for prestige or on account of stern necessity. The feeling on the part of Nayars is equally pronounced and is bound to grow stronger. Inter-caste marriages of the sort contemplated must, therefore, die out in a few years if the husband desires to retain his place on alleged superiority of birth, when self-respect and self-interest assert themselves to persuade a powerful community to shake off the fetters which custom has forged to its detriment."

When this is the opinion that I have deliberately recorded in the Memorandum which, I take it, Mr. Krishna Aiyar has read, I am surprised that he should argue like this. It has been observed by Mr. Krishna Aiyar that there are various difficulties on account of the nature of the words that I have used in the amendment, *viz.* 'having'. I do not think, 'having' is an objectionable word; it may refer to the past, present or future. If any members thought seriously that there might be a mistake with regard to the use of the word 'having', they could have very well looked up to the previous Section (2) of the present Bill and found out, if they were serious, that the wording of Section (2) could have been adopted without difficulty. The wording of that Section is:

"It shall apply to Nayars domiciled in Travancore, and to such Nayars not so domiciled and non-Nayars whether so domiciled or not, as have, or shall have, marital relation with Nayar females domiciled in Travancore".

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There was absolutely no necessity for any attempt to make out the meaning of the word 'having' as a *reductio ad absurdum*. With regard to this Bill, we have found several eyes and several spectacles carefully watching its progress in every stage. I should be pardoned for using the word, 'carefully' because the care with which Mr. Subba Aiyar and others who went into the matter was not inferior to that which was displayed by Brahma who looked on in his old age, with spectacles on to supervise the creation of *Tilottama*. He wanted to see that everything that could possibly be done was done and looked for the best result that he could obtain in the shape of a beautiful damsel. Therefore in order to prevent the artists from doing anything wrong, old Brahma sat in his chair with spectacles on and pored, deliberately pored, until *Tilottama* became a very beautiful woman. When I find this creditable attitude of Brahma has actuated several members of this House with regard to other Sections, why should the legislative *Tilottama* be spoiled by indifference in later stages?

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Has Mr. Velu Pillai any idea of the creative power of Brahma?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I possess as much knowledge as Mr. Nidiry at any rate. I thought Mr. Nidiry would be able to understand a figure which has got the effect of making arguments shorter than they would otherwise be, because I may say that is the object of figurative language.

MR. A. HOOGEWERF (*Nominated*): May I know—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I can't hear.

PRESIDENT: I don't think Mr. Hoogewerf means anything seriously.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Since he is not serious, I have nothing to answer.

The gentlemen now talking against the amendment could have said at the time that sub-section (2) of Section (1) was passed, that these words 'as have or shall have' would create difficulties in further stages. Although several of us said that the testamentary power might be availed of to prevent the defect of the working of Section 22, neither Mr. Subba Aiyar nor Mr. Krishna Aiyangar, nor Mr. Paramesvaran Pillai, referred to the circumstance that under the Wills Regulation there was a handicap and that it should be removed. But that has not been mentioned. Now I can understand, Sir, why this new development has arisen.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): With your permission, Sir, may I draw his attention to the fact that the word was put into the Bill by the Select Committee of which he was a member? It is not fair to saddle some particular members alone with the responsibility for what he regards as a mistake.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, in the Select Committee I did raise this point. I did argue this point and I have argued it with Mr. Krishna Aiyangar also.

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[Mr. T. K. Velu Pillai.]

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I suppose the majority overruled it. It is not in the dissenting memorandum submitted by my friend.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Am I estopped on that account?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not know what is the force to be attached to it. That was the general consensus of opinion of the Select Committee when we were considering the thing. It was perfectly open to him at a further stage to question our correctness when we sat over the Bill. It was then perfectly within his competence. I merely draw his attention to that fact; let him not attempt to make out as if it was somebody's special interest or attempt to introduce this provision, much against the required natural justice. It may be that they went wrong.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I shall be the last person to say anything like that analysing motives. I would challenge anybody to show a single instance where I wanted to be unfair to any community or to any individual, and if any instance is forthcoming I shall certainly resume my seat at once. Sir, I boldly make the assertion that I never attributed motives to anybody in this matter. I never wanted to go against anybody's rights. On the other hand, consistently with my principle of justice I have been advocating certain modifications in the Bill. That is one point.

Secondly, even if the light had not dawned upon me in the stages of the Select Committee, and if the light had not dawned in spite of the great learning of my friends like Mr. Krishna Aiyangar, does Mr. Krishna Aiyangar want to erect new fortifications and ramparts to prevent new ideas coming to me or to any one?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Never, never.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): So that, at any stage, even in the course of speaking, if any new ideas suggest themselves to a member of this House, it will be a great dereliction of duty if he does not give the House the benefit of those ideas. The chronology of the idea is indifferent to me, and the House will, I am sure, be indifferent to questions of chronology in this matter.

Now it has been said that the difficulties are great. But in the view I have taken of the language of Section (2) which I have read out *in extenso*, there will be no trouble and if the phraseology is ambiguous—even with regard to that, I am able to maintain my position as I explained before—I am not against accepting the words 'as have or shall have' if the House is prepared to adopt them. That there should have been an attempt made by some of the respected members of this House to demonstrate that my proposition was a kind of *reductio ad absurdum*, where a verbal change may be easily made is neither fair to me nor to the House nor to themselves.

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On the merits of the amendment, several friends of mine have addressed the House. Their reasons have been convincing. Now, if there is any defect, if the Hindu Wills Regulation is bad and does any amount of mischief, according to the enlightened conscience of the communities concerned, or if the Government are of the same opinion, they may place a Bill before the House saying that, hereafter, from the first day of a particular year or any subsequent day they shall deem fit, every body in Travancore—be he a Hindu or a Christian or a Mahomedan--should have testamentary power, and I shall give my opinion on that occasion. I did not anticipate the apprehension that I want to withhold from those communities rights which the Nayars, Christians and some others possess. But Mr. Subba Aiyar refers to the circumstance that the Christians and the Nanjinadians and the Nayars have been able to get testamentary power in spite of the protection of the Wills Regulation, and that my proposal is therefore unfair to certain communities. That is an argument which I cannot appreciate for one single moment. If we want a measure like that, if these Sections of the Wills Regulation should be repealed, if full testamentary power of disposition should be given to all the subjects of His Highness the Maha Raja, that is a different question. But we have to do that in open day light after giving the people an idea of what we are going to do. We ought not to do it in secret conclave. People may or may not like to make wills. Mr. Krishna Aiyangar said yesterday that there were people who were afraid of makings wills. There may be people in some parts of the country, in remote nooks and corners, who may not care to have these particular Sections to be repealed. If there are, let us consider their views also. But in Mr. Subba Aiyar's argument, there seems to be a consistent principle because, Sir, I remember that at the time the Civil Procedure Code Amendment Bill was taken up for consideration, although the whole world knew that it was only the rules of procedure that would be modified or abrogated or whatever it might be, Mr. Subba Aiyar in true chivalric fashion allowed a certain rule of substantive law to be incorporated in the Code which related to an adjective law; and he said that the law in regard to interest might be changed. I remember even the very same expression used on this side of the House against that. It was referred to as a kind of smuggling. But I do not want to participate in that kind of smuggling work particularly because this is a non-official measure. Sir, we are all jealous of the powers of the House and of the rights of the people being properly understood before we effect changes. Now, there is no use in arguing on facts which I did not raise. Did I say that there shall not be any testamentary capacity? I never said that. It is not a matter for our present consideration whether the Wills Regulation should be amended. But to incorporate into this Bill a Section of such doubtful utility and such doubtful justice, without giving the parties to be affected by the change an opportunity to express themselves on this question—that, certainly, is unfair, and I trust that the Council will take a just view.

MR. J. JOHN NIDIRY (*Changanachery cum Mmachil*): Does he know that, after all, what is intended to be conferred by the provision in question is discretionary?

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[Mr. T. K. Velu Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Mr. Nidiry of all persons should be able to understandthat executing a will is a mere discretionary act. No law can compel a man to make a will. So that, there is no necessity to go on with this question in this manner. I raised but a question of procedure, an important subject according to me. We shall do nothing which would affect the rule of the Wills Regulation in cases which have nothing to do with marriage with Nair females. All we are concerned with is the right of non-Nairs who may have marital relations with Nairs and they come within the purview of this law. This kind of ingenious device of discrediting the amendment by raising erroneous issues is not entitled to any weight and it has not been substantiated at all.

MR. JOSEPH PANJIKARAN (*Shertallai*): Can he not ask the permission of the Chair to make the alteration in the amendment?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes. It is only a small matter.

PRESIDENT: I have no objection whatever.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Such non-Nayar 'as have or shall have'—

PRESIDENT: A verbal alteration, is it not Mr. Velu Pillai?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes, Sir; that is all. We should keep the issues clear and distinct and consider the question of procedure, and first and foremost, we should consider whether we shall be doing our duty if we take people by surprise—and enact a law of this nature. Even Mr. Subba Aiyar will not ask for a decree, because in the course of a suit, the Judge finds there is a neighbour who is not impleaded having substantial interests in the property; he would recognise that he would be doing a wrong thing if he decrees against that neighbour also. On the question of the merits I have nothing more to add. But that is also an important matter. It is a debatable question. Modern legislatures have taken a different view from the legislatures in earlier years. Even the *laissez faire* theory which some people are fond of—even that is being encroached upon in the interests of society. Let us not take all these questions and drag them into the arena of discussion; let us confine ourselves to the question of procedure. Is this House to perpetuate such a gross mistake? That is the question before us.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I thank Mr. Velu Pillai for having taught me or given me some lesson in constitutional law on this occasion.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I merely said that he did not remember this principle of constitutional law. I did not use any expression which is capable of any other interpretation.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do grant that I am not an expert and also admit that, perhaps on account of old age, I may be failing in my memory.

MR. JOSEPH PANJIKARAN (*Shertallai*): I rise to a point of order. I did not understand how Mr. Subba Aiyar gets an opportunity to speak now. I want the President's ruling in regard to this.

PRESIDENT: He is quite in order.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I never made any personal allegations against Mr. Subba Aiyar nor have I made any—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There is the shorthand writer to verify.

PRESIDENT: I believe you concede that, if you make some personal remark against him, he must have the privilege to reply.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): He has made personal remarks and I do not mind much about them. But all the same he referred to the introduction of an amendment in the Civil Procedure Code Amendment Bill, and he also referred to a motion for the appointment of a Select Committee of this Bill and all that, and I take it that this is perfectly personal. I may also say that I might have forgotten the constitutional law a bit. I thought that the object of appointing a Select Committee is to assist the person in charge and those who are there, with their own knowledge of the thing. My friend Mr. Velu Pillai, much younger than myself and with greater aspiration, must have been present when the Bill itself was discussed. I do not remember myself personally this question of constitutional law having been raised by him; but if it were ever raised, I think the Select Committee's Report which was signed by the members subject to notes of dissent, should at least contain the points of difference, if any, of the members who differed from any portion of the Bill. I ask the House to read his dissenting minute and say whether it *does* contain any word about this amendment—smuggling of the Wills Regulation in the Nayar Regulation or whatever it may be—so that it may not be said that he forgot it. It was a very important amendment. I can well understand if the point struck Mr. Velu Pillai later on and he presses it.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): A word of personal explanation. Not because I forgot it, but because I knew my rights, I knew the remedies open to me and also knew that even though I did not record any opinion in the memorandum, I was at liberty to take up that question. My memorandum was rather long and in fact longer than that of anybody else. And I did not want to make it longer still.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I certainly did not say that he is estopped from putting forward his amendment. What I said was that, if one who is ticklish about the forms and procedure, who is so very strict about them, would say that he approved of the Select Committee's Report subject

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[Mr. V. Subba Aiyar.]

to the note of dissent, and not say a word about the point under consideration, we may take it for all practical purposes that he has nothing to say about it. That is what every reasonable man would understand.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): There are certain forms which I think material but there are other forms which are immaterial.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Then my friend should give up his whole case. If he thinks that this particular form is immaterial, I do not know whether he should make so much fuss about this small matter and should have come forward for justification. I leave it at that, so far as the personal matter is concerned.

Going into the merits of the case, I may say that if we do not introduce this provision here, as Mr. Sankara Menon put it or Mr. Parameswaran Pillai suggested, it may lead to difficulties. What struck the Select Committee was this, namely, that in as much as the Wills Regulation applies only to some Sections, as Nayars are out of it, Ezhavas are out of it, Nanjanadiyans are out of it, if we refer to persons who have or shall have marital relations with Nayars, the result will be that we are leaving it to the court to decide whether a person is competent to marry a Nayar and there may be ever so many complications which we cannot possibly think of. When a person executes a will, the court has to decide whether he is competent to contract marriage with a Nayar. The parties may collude or one party may not give proper evidence and a court may decide that a person who cannot marry a Nayar is competent to do so. Further, when we are so very strict, it should not apply to other communities, I say even in non-Nayar communities having marital relations with Nayars. The power of disposition by will was not mentioned in the first Bill. Even the present amendment does not take into account any non-Nayar at all. That means that non-Nayars should not be empowered to make a full disposal of their property. If so, the objection that is now raised will apply equally to the other thing also. Is it desirable that when we are providing for non-Nayars we should make it difficult for the court to decide as to who are or who are not entitled to have marital relations with Nayars? We thought that it was a dangerous thing to leave it to the court to decide under the circumstances. If we take away for instance, as I said at the outset, Malabar Brahmins, the Kshatriya community and others, who are having marital relations with Nayars, there will be very few communities left, and taking into consideration the whole matter, we thought it better to provide for it. All the objections raised by my friend will apply also equally to non-Nayars who have marital relations with Nayars, because repealing the provisions of the Wills Regulation was not under contemplation then. I do not think I need say anything more, because, as a matter of fact, I know sometimes Mr. Velu Pillai grows vehement and eloquent. I do not take any offence at what he said.

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MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): That is, in some measure, due to the fact, that I have known Mr. Subba Aiyar for a very long time, even from the time when I was a very young man. I may have taken lessons in practice from him.

PRESIDENT: Do you press your amendment?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What is the amendment, please?

PRESIDENT: His amendment is to substitute the word 'Hindu non-Nayar or non-Nayar who has or who shall have marital relations with a Nayar female for the word Nayar', in clause 25.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Does he refer to past marriage or present marriage?

PRESIDENT: You quoted clause (2). What does it say? You wanted to adopt that language. 'Any Nayar or non-Nayar who has or who shall have'; those are the words I find.

The amendment was put to vote and lost, 6 voting *for* and 10 *against*.

The Council adjourned at 2-30 P. M. and re-assembled at 3-17 P. M.

The following amendments were not moved:—

MR. T. K. VELU PILLAI:

Line 3. Substitute "Section 6 of Regulation VI of 1074 is hereby repealed" for the words "Sections, 5, 6 and 7 of Regulation VI of 1074 are hereby repealed."

MR. C. SANKARA MENON:

Line 1. Insert after "Hindu" the words "between whom and a Nayar female conjugal union is permitted according to recognised social custom and usage."

Line 3. Add the words "to that extent" after "repealed."

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN:

Add the following Clauses before Clause 26, renumbering the subsequent Clauses.—

"26. (i) Every member of a tarwad has a proprietary interest in its properties.

"(ii) The karanavan shall have the right of management and possession of the tarwad properties and he shall be responsible for the proper management of the same, subject to the provisions hereinafter contained.

"(iii) The anandaravans have the right and the duty to see that the tarwad estate is properly administered by the karanavan and is duly conserved for the use of the tarwad and that his right to succeed to the karanavanship is in no way impaired.

"(iv) For the purpose of this Section and those following the anandaravans may nominate in writing one of them as their representative whose duty it shall be to assist the karanavan in the proper management of the tarwad in the capacities provided hereinafter.

"27. The karanavan or the manager for the time being shall keep a correct and true account of the income and expenditure of the tarwad, the original or an attested copy of which shall be open to inspection in the tarwad house by all the major members twice a year or before the 30th of Kumbhom each year and of Chingam in the succeeding year.

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[Mr. K. Paramesvaran Pillai.]

"28. The karanavan or the manager for the time being shall keep and maintain a true and correct inventory of all the movable and immovable properties and of all the liabilities of the tarwad and it shall be open to inspection by all the major members of the tarwad on joint notice given by a majority of them."

PRESIDENT: The question is that Clause 25 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 26.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, in Clause 26, I propose first to move that the expression "immovable" occurring in line 3 may be dropped. My reasons are as follow:—

In the corresponding provision of the existing Nayar Regulation, the expression that is used is only "property" which will comprise both movable and immovable property, but in the present clause the concurrence of all the adult junior members is required for the sale of property only in the case of immovable property. I am pointing out the risk that the marumakkathayam families will be running if this provision is to be retained. With respect to an inch of ground which may be property of the poramboke variety, if it is necessary that a sale can be executed only with the concurrence of all the adult junior members, in the case of an elephant or in the case of any other valuable property in general use like an ornament of extraordinary value, it would be extremely bad that the karanavan alone should be allowed to alienate it permanently to the prejudice of the tarwad. Of course, in the matter of ordinary produce and yield from tarwad property, such things stand on a different footing. But it is better that the expression as it occurs in the existing Regulation is retained, and the courts given the necessary discretion in the matter of administering the law.

PRESIDENT: Are not the other words "or mortgage it with possession for a period of more than twelve years or lease it for a period more than twelve years" inconsistent with the amendment?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): An elephant may be leased. Of course all the expressions are intended to cover all kinds of properties. If movable properties of any description cannot be mortgaged, the provision will apply to other things. In the matter of interpreting the Section, it will be entirely left to the courts. Hence, first of all, I move that the expression "immovable" be dropped from the Section.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have no objection to accept the amendment. The expression "immovable" does not occur in the existing Regulation. There is no reason why it should not be ddleted.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not quite agree to that, Sir, because the alienation of immovable property alone requires the consent of all the major members of the tarwad. If we omit the word "immovable" and make it applicable to all cases, it may lead to very many difficulties. I do not know where we will have to stop then. The question whether a bull or a calf can be sold would arise and all this may lead to difficulties.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is provided in the next proviso.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Then again, in a similar provision in the Ezhava Bill we have not accepted that amendment. So far as these small matters are concerned, I do not think there is any material difference in principle. I, for one, would not like that there should be a provision treating about a similar matter in one Regulation and a totally different wording and provision in another. I do not think that Mr. P. K. Narayana Pillai has been able to convince the House as to the absolute necessity for accepting his amendment. So, I am not prepared to go further than the Select Committee's Report.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I press the motion and maintain that the expression "immovable" will have to be dropped. My argument was that the word does not occur in the existing Regulation and that its introduction would lead to the inconvenience that I pointed out. If Mr. Subba Aiyar is not still convinced, I press it.

The amendment was put to the vote and lost.

PRESIDENT: What about your next amendment?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): As to the next part, of course, it is necessary only if the former part had been carried. So I do not move the rest.

The following amendments were not moved:—

MR. P. K. NARAYANA PILLAI:

Add at the end the following:—

"Nothing contained in this Section or the next Section as regards the consent of junior members shall affect the right of the karanavan or other managing member to deal with the yield and produce of tarwad property or with any perishable movable property to carry on the management of the tarwad or shall make the consent of any junior member indispensable where the right of the tarwad in the property to be dealt with is against any such junior member."

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN:

Line 3. Add the words "movable or" after "tarwad."

Add "or without" between "with" and "possession."

Lines 3 and 4. Delete the words "for a period of more than twelve years" after the word "possession" and before "lease."

Line 5. Add at the end the following:—

"or make a gift or alienate it in any other way" after the word "years."

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[President.]

Add the following explanation at the end of the Clause :—

"Movables include ornaments and such other valuables as the majority of the major members may define ; but they shall not include the yield of the tarwad property or any perishable movable property, and the clause is not intended to restrict the rights of the karanavan to dispose of such property for the purposes of efficient management."

PRESIDENT: The question is that Clause 26 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 27.

The following amendments were not moved :—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN :

Delete the Clause and substitute the following ;—

"(i) No hypothecation, pledge or lease with premium of such property shall be valid unless it is executed for tarwad necessity and with the written consent of the senior anandaravan and the representative of the anandaravans mentioned in Clause 26 (ii).

"(ii) No discharge of mortgages (with or without possession) hypothecations, pledges or chitties or such other dues to the tarwad shall be valid unless it is executed with the written consent of the senior anandaravans mentioned in Clause 26 (iv) or unless the funds thereof are entirely reserved or utilised for the tarwad."

MR. P. K. NARAYANA PILLAI :

Line 1. Delete the word "such" occurring before the word "tarwad".

PRESIDENT: The question is that Clause 27 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 28.

The following amendment was not moved :—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN.

Delete the clause and substitute the following :

" Any debt contracted by the karanavan shall be binding on the tarwad if he has acted in good faith and for unavoidable tarwad necessity."

PRESIDENT: The question is that Clause 28 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 29.

The following amendment was not moved :—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN :

Lines 1 to 3. Delete the portion beginning with "where" and ending with "property or" and substitute the following :—

" Where a karanavan acts contrary to the provisions of Sections 29 and 39, and."

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PRESIDENT: The question is that Clause 29 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 30.

The following amendment was not moved :—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN:

Delete the Clause and substitute the following:—

"Any member of a tarwad including the karanavan shall be at liberty to give his vested and inborn rights in the tarwad by a unilateral surrender of the same, evidenced by a registered instrument."

PRESIDENT: The question is that Clause 30 in the Bill do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 31.

The following amendments were not moved :—

MR. P. K. NARAYANA PILLAI:

Line 2.

Add the following after the word "instrument":—

"or under a decree of a competent court of law".

MR. C. SANKARA MENON:

Add, at the end, the words, "and that too to a member of the tarwad."

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN.

Add the following Clause after Clause 31:—

"Every major male member, and, in the absence of such male member, every major female member of a tarwad, has a right to succeed to the karanavanship in the order of seniority on the death, renunciation or removal of the karanavan.

"When there is no major male or female member in a tarwad to be the karanavan, the civil court, on application from any interested party, shall appoint a manager and invest him with the necessary powers."

PRESIDENT: The question is that Clause 31 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 32.

The following amendment was not moved :—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN.

Line 2. Delete the portion after the words "as such and" and substitute the following: "all the members of the Tarwad"

PRESIDENT: The question is that Clause 32 in the Bill as amended by the Select Committee do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 33.

MR. C. SANKARA MENON (*Quilon*): The amendment of which I have given notice runs as follows :—

Delete the Clause and substitute the following :—

"Every member of a tarwad is entitled to maintenance either by allotment of grain or money or of property proportionate to the income and status of the tarwad, whether such member resides in the tarwad house or not".

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[President.]

The Section as it stands would mean that the karanavan is bound to maintain every member of the tarwad. Now, a karanavan is bound to maintain the members of the tarwad only out of the income of the tarwad property. The Section does not say whether the karanavan is competent to allot property for maintaining the members of the family instead of by allotment of grain or money. Although the karanavan may be competent to allot property for maintenance, in view of the fact that this Section is liable to be interpreted otherwise, I would like to add a proviso to the Section instead of the amendment originally proposed by me, if Mr. Paramesvâran Pillai would accept the proviso rather than the amendment. The proviso is to the effect that "it shall be competent to the karanavan to make allotment of properties in lieu of maintenance."

PRESIDENT: That is not your amendment.

MR. C. SANKARA MENON (*Quilon*): That is the only object of my amendment.

PRESIDENT: You want to allot a portion of the properties. Is that what you mean?

MR. C. SANKARA MENON (*Quilon*): Yes.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I want to know whether the existing words in the Section, namely, "shall be maintained by the tarwad" may not cover the allotment of properties also?

MR. C. SANKARA MENON (*Quilon*): I have my own doubt.

PRESIDENT: Are you dropping the amendment which has been tabled?

MR C. SANKARA MENON (*Quilon*): With the permission of the Chair, I would add a proviso which will serve the purpose of my original amendment.

PRESIDENT: That is, "provided that it shall be competent to the karanavan to make allotment of properties in lieu of maintenance".

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know whether there is any prohibition against it now?

MR. C. SANKARA MENON (*Quilon*): I know there are cases where the junior members do not accept it and the court also does not doubt—

PRESIDENT: You are not going to move your amendment.

MR. C. SANKARA MENON (*Quilon*): With the permission of the Chair, I would withdraw that and move instead a proviso.

The original amendment was withdrawn by leave of the House.

PRESIDENT: I would refer to one defect in your present proviso. Apparently you want that the maintenance should be suitable or proportionate to the income and status of the tarwad. But you are not bringing it in your new proviso.

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MR. C. SANKARA MENON (*Quilon*): That is understood.

PRESIDENT: Then what was the necessity for bringing it in the original amendment?

MR. C. SANKARA MENON (*Quilon*): Simply to make it plain.

PRESIDENT: Then you do not want those words.

MR. C. SANKARA MENON (*Quilon*): With the permission of the Chair, I would substitute.

PRESIDENT: I have no objection. Does anybody second that?

The amendment fell through for want of a seconder.

The following amendments were not moved:

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN:

Delete the Clause and substitute the following:-

"Every member of a tarwad is entitled to be maintained by the tarwad according to the status of the member in the tarwad and the income of the tarwad.

Explanation. (i) Maintenance includes not only food and medical aid for those who live with the other members in the common tarwad, but may also include such sums of pocket money (grain or any other yield in kind) when the tarwad income can afford the same.

(ii) Living outside the tarwad house shall be no reason for withholding the pocket money portion of the maintenance."

MR. V. KUNJUKRISHNA PILLAI:

Add, at the end of Chapter VI, the following new Clause:-

"Any member of a Nayar tarwad can redeem any tarwad property outstanding on mortgage without prejudice to the interest of the tarwad."

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN:

Add the following Clause at the end of Chapter VI.—

"Every member of the tarwad has the right to seek the removal of the karanavan by a decree of court when it can be shown that he is physically, mentally, or morally incapable of transacting his affairs, or that he mismanages the concerns of the tarwad or that he wilfully neglects to keep proper accounts of the tarwad (as in Sections 27 and 28) or that he is guilty of conduct of a kind tending to defeat the very purpose of this Chapter.

"Any member or members conjointly shall be entitled to redeem tarwad properties outstanding on mortgage or other charges without prejudice to the interests of the tarwad."

PRESIDENT: The question is that Clause 33 as amended by the Select Committee do form part of the Bill.

The motion was carried and the Clause was added to the Bill.

Clauses 34 to 38.

PRESIDENT: I see that there is an amendment in regard to all these clauses.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, the amendment proposed by me was intended to be a substitute for four clauses from Clause 34 to Clause 38. This particular amendment proposed by me is in furtherance of the principle of individual partition with a very small reservation. But I understand, Sir, that there is one section in the community which takes a different view

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[Mr. A. Govinda Menon.]

of the question. Though I am myself not convinced of the soundness of their views, yet out of deference to the wishes of the learned mover of the Bill as well as the section said of the community though small, for the time being I beg to submit that I do not move that amendment.

PRESIDENT: Do you not move your alternative amendments?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Some of them I move.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): There are amendments to Section 34 coming after this.

PRESIDENT: I have no objection to take up the amendments in the order of the Sections. There is also another amendment by Mr. L. R. Raja Raja Varma Koiltampuran to delete Clauses 34 to 38, and to substitute the following:—

"*Any member of a tarwad may claim his share, divide and part or be compelled to divide from the other members by them: the share of the minors under the guardianship of such member shall always go along with him.*"

Are you moving that?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavagai*): Yes, Sir. I beg to move that.

"*Any member of a tarwad may claim his share, divide and part or be compelled to divide from the other members by them: the share of the minors under the guardianship of such member shall always go along with him.*"

I would like to add the latter portion as a proviso.

"*Provided the share of the minors under the guardianship of such member shall always go along with him.*"

PRESIDENT: That may be inserted.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavagai*): A large section of the members of the Nayar community asked me to put in such a clause for individual partition. So it will be unjust on my part if I do not move it now. The question of individual partition has been so much complained of by several Nayar members all along that there is no need for my discussing about the merits of that question now. So I put the motion before the House for discussion.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I beg to second the motion, and, in doing so, I may plainly state that I am going against the wishes of one or two friends of mine in this House. But, I think, so far as I am concerned, my sense of duty compels me even to move that proposition, if no other member got up and moved it. I think in view of the fact that sections regarding marriage, divorce and intestate succession have been passed by this Council, it will be a sin on the part of this Council to leave the sections relating to partition as

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they are in the Bill presented by the Select Committee. I do not think it is of much use now to detail the arguments that have been advanced for and against individual partition in this Council. They have all been threshed out to the minutest detail in the press and on the platform and in this Council also. I am of opinion that the social and economic condition of the Nayar society will never be improved to the extent it can be improved, if we retain a law as provided for by the Sections in the Bill before us. It is absolutely necessary to leave the individual free to get and dispose of his property according to his will. Every civilised nation in this world possesses that right and I do not think why a community like the Nayars alone should be deprived of that right. In fact, in my own view, the *marumakkathayam* system of the Nayars, whatever has been its use in times past—and I acknowledge it has been of much use in the condition of society which existed then,—of course it served its purpose and it was a good institution also,—at the present day, is a clog on the wheel of progress in every direction so far as the Nayar community is concerned. There are objectors to this view, though they are now practically a microscopic minority. But their objections are more or less based on two facts—sentiment and perhaps selfishness. It is sentiment that rules the majority of this minority. I cannot say that no value should be attached to that sentiment. But sentiment in a case like this ought to give way and the interests both material and social should preclude any other interests in the consideration of this question. Without a law of individual partition the provisions relating to marriage, divorce and intestate succession would not be of any use, and I trust that those of my friends who voted for those provisions will certainly side with us in passing these Sections also.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Sir, I have tabled some amendments which go on the very same lines as the amendment put forward by Mr. Raja Raja Varma Koiltampuran. My amendments are "delete Sections 35, 36, 37 and 38." These amendments altogether involve the same principle as the amendment just now moved by Mr. Raja Raja Varma Koiltampuran. I cannot accept the wording of the amendment as moved by Mr. Raja Raja Varma Koiltampuran. But I have to support the principle. As regards the arguments, I have put forward all the arguments during my speech when the Bill was introduced before the Council. On that occasion I stated that I was the bearer of a mandate from one of the largest, if not the largest, Nayar constituencies of the State. With that mandate in hand, though with great deference to the opposite conclusion that seems to have been arrived at by the other members of this Council, I should be failing in my duty if I did not support the principle involved in the amendment of Mr. Raja Raja Varma Koiltampuran.

MR. L. R. RAJA RAJA VARMA KOILTAMPUARAN (*Edavagai*): Will Mr. Krishna Aiyar be able to give a better wording for the amendment now before the House?

PRESIDENT: I do not think it is in order. You will have to suggest it yourself.

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[Mr. K. Paramesvaran Pillai.]

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I yield to none, not even to my learned friend Mr. A Govinda Menon, in my admiration for the principle of individual partition. Personally speaking, my opinion is that we ought to have individual partition, in the strictest and in the most extreme form. But, as the mover of the Bill, I oppose the amendment of Mr. Raja Raja Varma Koiltampuran, because, whatever may be my personal opinion in the matter, I am aware that there is still a section of the community—though a conservative section and a minority, a section of influential people—who think that the time has not yet come for accepting the principle of outright individual partition. As a compromise between the two contending schools of thought in regard to this matter, I accepted the provision contained in the Bill and I am prepared to support it. The Bill itself is so drafted as to accept in the main the principle of individual partition. Sir, you will see from the wording of it—

"Subject to the provision of Sections 35, 36 and 37 every adult member of a tarwad shall be entitled to claim his or her share of the properties of the tarwad".

—that the Section accepts the principle of individual partition but only makes it subject to certain restrictions. We thought that, at the present stage of society, taking into consideration also a section of people who are opposed to individual partition, it will be better to put certain restrictions upon individual partition.

Secondly, Sir, partition is as yet unknown to this community. Therefore, it will take some time before we adjust ourselves to a law of partition. Some time must be given to the society to adjust itself before it completely disrupts the tarwad. The carrying into effect the principle of individual partition will disrupt the tarwad, and in order to prevent a rather too rapid disintegration of it, we thought some restrictions ought to be put upon it at the present stage. Therefore, we thought it expedient that no individual should be entitled to divide from his thavazhee so long as the female ascendant of the thavazhee is alive. It is only the life of the female ascendant of a particular thavazhee that is a fetter. Now, even during the lifetime of the female ascendant, partition has been provided for under certain circumstances; for instance, with her consent any member of the tarwad might separate from the thavazhee. They may also separate from the thavazhee if the female ascendant has only daughters and they are past the child-bearing age. It is also contemplated that if the female ascendant has only sons and the female ascendant has past the child-bearing age, the members of the tarwad or any member of the tarwad may claim to divide and be divided from the whole tarwad. So, after all, the fetter is so weak that any individual who really wants to divide from the tarwad will be able to divide from the tarwad under the present system. So, I do not think it possible or expedient or even wise to go beyond this at the present stage. Let us see how this provision works, and if necessary, it can be soon amended if it is found that it is so absolutely

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necessary that without a complete power of separation from the tarwad outright individually, we cannot get on in this life. So, I think that, at present, the provision in the Bill is quite sufficient, and I am sorry I cannot support the amendment of Mr. Raja Raja Varma Koiltampuran.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavagai*): All the three members who spoke on the subject have praised the principle of the motion. There is a large section of the community who want such a provision to be given them in the Bill and they have asked me to move the amendment. So I press the motion to a division.

The motion was put to the vote of the House and declared lost.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): May I ask for a poll?

PRESIDENT: It is too late now.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): No other motion has been taken up.

PRESIDENT: You should have demanded it earlier, Mr. Govinda Menon. Now it is too late.

PRESIDENT: The next amendment stands in your name, Mr. P. K. Narayana Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Govinda Menon has an amendment to Clause 34.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I move that, in line 1, the word 'sections' be deleted and the word 'section' be substituted instead, and also that Sections 35, 36, 37 and 38 be deleted.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I rise to a point of order. The motion brought forward by Mr. Raja Raja Varma has just now been lost. What Mr. Govinda Menon wants is outright individual partition and the motion would be the same as that which was just thrown out by the House. Therefore, I do not think it is open to Mr. Govinda Menon to move the amendment just now.

PRESIDENT: You cannot move the amendment, I am afraid.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Then, you ought to have acceded to my request for a poll.

PRESIDENT: I must say, that was not in order. You were not in time when you asked for the poll.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move my alternative amendment which runs as follows;

'Add after sub-clause (ii) the following:

'Or (iii) if the female ascendant is past the child-bearing age and has only adult male children'."

The existing clause is to the following effect:

"(2) Notwithstanding anything contained in sub-section (1) every adult member of a tarwad shall be entitled to claim division even during the life-time of the female ascendant or without her consent;

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[Mr. K. Parameswaran Pillai.]

(i) If the female descendants of such female ascendant have no issue living and are past the child-bearing age, or

(ii) If the majority of the adult members among her descendants consent to division."

Now this does not take into consideration the possibility of the female ascendant herself being past the child-bearing age and having only adult male children implying the impossibility of any further expansion of the tarwad. My submission is that there cannot be any obstacle to individual partition in such cases. It is in view of that particular position that I have moved this amendment. The descendants themselves being past the child-bearing age provision has been made in this Clause itself. But where the ascendant herself happens to have passed the childbearing age and when there is no possibility for the expansion of the tarwad by the increase in the number of its members, I beg to submit,a legitimate case for individual partition is made out. Therefore, I am moving this amendment for the acceptance of this House.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I second the amendment.

MR. C. SANKARA MENON (*Quilon*): I beg to second it.

PRESIDENT: It has already been seconded by Mr. Govinda Menon.

MR. C. SANKARA MENON (*Quilon*): I beg to support the amendment. There is a similar amendment by me also. There may be cases where the majority of the adult members may claim partition although the mother may not have passed the child-bearing age. It will work very great hardship to the children that may be born to that mother after the partition. In view of that fact, I beg to support the amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know from Mr. Sankara Menon whether he is not for a definite age being mentioned in the Bill instead of putting it as past the child-bearing age?

MR. C. SANKARA MENON (*Quilon*): I find the expression 'past the child-bearing age' used in several other Sections; therefore, I do not think there will be any difficulty in regard to that.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Will there not be difficulty in the actual working of it?

MR. C. SANKARA MENON (*Quilon*): Personally, I have no objection to the age being fixed.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have no objection to accept the amendment. This idea was not lost sight of at the time the Section was framed. As a matter of fact we wanted that in the case of a female ascendant who had only sons and who had passed the child-bearing age, her sons must be able to divide

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the property among themselves; and a special provision was made in regard to that. But, it was afterwards changed at the instance of Mr. P. K. Narayana Pillai into the present form. It was thought that the present clause would include the case contemplated in the amendment also, and in my opinion it does include. Nevertheless, in order to make it clearer I have no objection to accept the amendment now proposed by my friend.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have nothing to say.

The amendment was accepted by the House.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I beg to move the amendment standing against my name. Mr. P. K. Narayana Pillai's amendment was only with regard to the case of the female ascendant. My amendment relates to the case of the female descendant of such female ascendant who has no issue living and has passed the child-bearing age. My amendment is:

"*Substitute 'only male issue' for the words 'no issue living' in line 1, sub-clause (2) (i).*"

PRESIDENT: Why not you add '*or if there is only male issue living and the mother has passed the child-bearing age*'? Perhaps that would be better.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): I have no objection to that. I think Mr. Paramesvaran Pillai will accept it. As it is, if a female descendant has sons living and at the same time has passed the child-bearing age, no partition is allowed.

PRESIDENT: So, your amendment is to add the words '*or have male issue*' after the words '*no issue living*'.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is a necessary corollary to Mr. P. K. Narayana Pillai's amendment and therefore I have no objection to accept it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In order to make it clear and in order to see that the expression 'past the child-bearing age' applies to both the alternatives, I think.—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I draw Mr. Subba Aiyar's attention to Section 36 where it is stated that, in a tarwad which consists only of adult members and minor members, the adult members shall not be entitled to divide from the minors? It is therefore that I advisedly put it as 'adult male children'.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would rather put it as

"(*a*) *no issue living and only adult male,*

(*b*) *and have passed the child-bearing age,*" so that there may be no difficulty in interpretaion as to whether the word '*and*' goes with '*no issue living*' or with 'adult male' also.

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[President.]

PRESIDENT: That is a matter for lawyers.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If we put in the alternative, sometimes gentlemen like my friend Mr. P. K. Narayana Pillai may interpret it to mean that the word 'and' goes only with 'or male issue' and not along with the first alternative. It is to avoid that interpretation that I propose the change.

PRESIDENT: You may repeat the expression 'past child-bearing age.'

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Or put it as (*a*) and (*b*) as follows:—

"*If the female descendants of such female ascendant*
(*a*) *have no issue living or only adult male issue;*
(*b*) *and are past the child-bearing age.*"

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Why not put it like this? 'Female ascendants of such females as have only male issue living and are past the child-bearing age'.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara cum Kunnattur*): That is my amendment.

PRESIDENT: That is not your amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If she has no male issue, what is to be done?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If she has not passed the child-bearing age there is the possibility of girls coming in at a later stage.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Supposing there is no male issue. There is only the woman who has passed the child-bearing age. Mr. Paramesvaran Pillai's wording of it would not include such cases.

PRESIDENT: What is your objection to Mr. Subba Aiyar's suggestion, Mr. Paramesvaran Pillai?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Nothing at all.

PRESIDENT: So, we will have it like this:—

"*If the female descendants of such female ascendant*
(*a*) *have no issue living or only male issue*
(*b*) *and are past the child-bearing age.*"

The amendment was accepted by the House.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): Clause 35 has not been put to the vote of the House.

PRESIDENT: I am going to put Clauses 34 to 38 together.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have an alternative amendment to Clause 38; but I do not see the word 'adult' in the Section.

PRESIDENT: You have it, Mr. Narayana Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, Sir. To bring out the meaning clearly I want to introduce the expression 'other' before the word 'adult'. Section 38 (i) says:

"the senior anandaravan of any collateral thavazhee or majority of the adult members of such thavazhee on behalf of such thavazhee or ....may claim an outright partition of property over which the tarwad has a power of disposal."

The senior anandaravan himself, as an adult male, is entitled to partition. It is only in a case where the senior *anandaravan* does not call for a division on account of his branch that the majority of the other adult members may claim partition.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask whether there is not a danger in that provision? Should it not be provided that the senior anandaravan can claim partition only under certain circumstances?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The senior anandaravan as provided in the clause is certainly entitled to call for a share on behalf of the thavazhee. In the absence of the senior anandaravan asking for partition the next provision is that the majority of the members of the thavazhee can come forward and ask for partition. Therefore, I am submitting, the majority of the other adult members of the thavazhee are entitled to claim partition only in the case of non-co-operation on the part of the senior anandaravan. Hence, I say, excluding the senior anandaravan, the majority of the *other* adult members will have to be taken into consideration.

PRESIDENT: I believe that was the object of the Select Committee.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, Sir.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any objection to it.

The amendment was accepted by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move the following amendment:—

In Clause 38, in line 7 substitute "the" for "a."

PRESIDENT: It is only a verbal alteration.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I accept it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If it is not too late I may put in one suggestion for which I am thankful to

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[Mr. P. K. Narayana Pillai.]

Mr. Stephenson. He suggested that 'majority' would mean at least three members. So two of the adult of the junior members may claim although the other members may be against it.

PRESIDENT: What is the harm?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The senior anandaravan does not count in that case.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of the total number the majority must be three. It should not be two against two. Supposing in a case there is a senior anandaravan and there are two junior anandaravan, the majority will be two. The senior anandaravan and the other junior member may not require partition. Why should the opinion of two junior anandaravans prevail as against a senior anandaravan and another junior?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In such cases they may be acting against the interests of the tarwad. It is not without foreseeing that that I have suggested the amendment.

The amendment was put and carried.

The following amendments were not moved:—

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN:

Delete Clauses 34, 35, 36, 37 and 38 and substitute the following:—

"Any member of a tarwad may claim his share, divide and part or be compelled to divide from the other members by them; the share of the minors under the guardianship of such member shall always go along with him."

MR. A. GOVINDA MENON:

Line 1. Delete the word "Sections" and substitute the word "Section."

Line 1. Delete the words "35, 36 and".

MR. V. KUNJUKRISHNA PILLAI:

Line 1. Delete the words "subject to the provision of Sections 35, 36 and 37".

MR. V. KUNJUKRISHNA PILLAI:

Add, at the end, the following:—

"But no descendants of a female can be allowed to divide from that female before the passing of her child-bearing age."

MR. V. KUNJUKRISHNA PILLAI:

Delete Clause 35.

MR. A. GOVINDA MENON:

Delete Clause 35.

MR. S. KRISHNA AIYAR:

Delete Clause 35.

MR. C. P. KOCHUKUNJU PILLAI:

Sub-clause (2) (i), Line 1, Clause 35. Substitute "only male issue" for the words "no issue living".

MR. G. PARAMESVARAN PILLAI:

Delete sub-clause (2) (ii), Clause 35.

MR. T. K. VELU PILLAI:

Delete sub-clause (2) (ii), Clause 35.

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MR. C. SANKARA MENON:

Clause 35, Sub-clause (2) (i). Line 1. Add after "and" the words "both such female ascendant and descendant."

Sub-clause (2)(ii). Add after "division" the words "and that such female ascendant is past the child-bearing age."

V. KUNJUKRISHNA PILLAI:

Delete Clause 36.

MR. A. GOVINDA MENON:

Delete Clause 36.

MR. A. GOVINDA MENON:

Delete Clause 38.

MR. S. KRISHNA AIYAR:

Delete Clause 38.

The question that Clauses 34 to 38, as amended, do form part of the Bill was then put and carried.

Clauses 34 to 38 as amended were added to the Bill.

Clause 39.

The following amendment was not moved :—

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN:

Line 1. Delete the words "or thavazhee mentioned in Sections 34 and 38," and substitute the words "mentioned in the last Section."

Lines 2 and 3. After the word "individual" delete the words "or to the members of such thavazhee as a whole" and substitute the words "or individuals."

PRESIDENT: The next amendment is in Mr. Krishna Aiyar's name. I think it is not in order. There is some mistake about it. His amendment says "mentioned in Sections 34 and 35." There are no such words there.

MR. S. KRISHNA AIYAR (*Mavelikara cum Kartigapalli*): I do not move it.

The following amendments were not moved :—

MR. S. KRISHNA AIYAR:

Line 1. Delete the words "mentioned in Sections 34 and 35."

MR. A. GOVINDA MENON:

Line 1. Delete the words "or thavazhee."

Line 1. Delete the words "Sections" and substitute the word "Section."

Line 1. Delete the words "and 35."

Lines 2 and 3. Delete the words "or to the members of such thavazhees as a whole."

MR. T. K. VELU PILLAI:

Line 3. Substitute the words "if a division *per capita* were made of one-half and *per stirpes* of the other half of the properties" for the words "if a division *per capita* were made."

MR. C. SANKARA MENON:

Add the following as Section 39 :—

"The provisions of Sections 34 to 38 shall not affect any family settlement effected prior to the date on which this Regulation comes into force, provided severance of interest between the individuals or thavazhees of the tarwad is contemplated by them.

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[Mr. P. K. Narayana Pillai.]

Explanation—A severance of interest shall be deemed to have been effected if the settlements do not provide for any re-allotment so long as there are any members in the thavazhees to which the properties are allotted."

PRESIDENT: The question is that Clause 39 do form part of the Bill.

The motion was carried.

The Clause was added to the Bill.

Clause 40.

The following amendment was not moved :—

MR. C. P. KOCHUKUNJU PILLAI :

Line 3. Delete the words "or heritable" and, at the end, add the following :—

"If a member dies after he became entitled to partition, his heirs shall succeed to the property which such member would have got if partition had been effected during his life-time."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move the following amendment: Add the following at the end of the Clause:—

"The provisions of this Section as to alienability and liability to be seized in execution shall also apply to property obtained from the husband or the father by the wife or the children, as the case may be, which, but for this Regulation, would form the tarwad property of the thavazhee so obtaining such property."

This amendment, I am smbmitting, should be added on to Clause 40. Clause 40 relates to the question of alienability and attachability of the tarwad property before the actual partition. This is how Clause 40 runs :—

"Until partition, no member of the tarwad shall be deemed to have a definite share in tarwad property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein."

Practically the right to partition of tarwad property has been conferred upon the members of the tarwad. Clause 40 says that until a partition the property cannot be alienated by any one member or seized in execution for the liability of any one member. I am submitting that the incidents of makkathayam property, at any rate before the date of Regulation I of 1088, are quite clear. For the debt or liability of any member, except the karanavan of a sub-tarwad, the property could not be proceeded against by a creditor. What exactly had been the result of Section 17 of the existing Nayar Regulation has been the subject of jarring judgments—even Full Bench judgments in our High Court—in interpreting that Section. The exact nature of the right conferred upon the group constituting the makkathayam group consisting of a woman and her issue has not been hitherto settled. To my recollection, Sir, there are a number of decisions to reconcile which is practically a despair to the lawyer. In the case of these gifts even after 1088, I think there is a lingering sense of the old incidents

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in these makkathayam groups, though such property obtained as makkathayam from the father or the husband, as the case may be, is liable to partition. In such cases it is difficult to postulate the exact nature of the holding.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Are they joint owners, or owners-in-common ? So far as the tarwad property is concerned they are joint owners. Tarwad property cannot be seized. But so far as the makkathayam property is concerned are they joint owners ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : My submission is that, so far as makkathayam property is concerned, they are joint owners. These were makkathayam properties on marumakkathayam basis till the date of Regulation I of 1088. The exact change that has been introduced with respect to that property by Regulation I of 1088 is a problem which remains yet to be settled by a final judgment by the High Court. We are not justified in coming to a conclusion by barely balancing a number of judgments on that point. The changes now introduced in Regulation I of 1088 are to the effect that such properties are partible. Partibility with respect to the tarwad property is now for the first time introduced by this measure at the instance of my friend Mr. K. Paramesvaran Pillai. Partibility has been introduced on a prior occasion in Regulation I of 1088. Therefore purely from the fact that partibility has been introduced in a group of persons constituting the marumakkathayam family it is difficult at once to infer that they are but tenants-in-common as in the case of a Christian family or a Mahomedan family, that a creditor is at liberty to proceed against any individual share in realisation of any debt due to him. With respect to the question of Mitakshara families, the rulings in the British Indian High Courts are not uniform. No doubt the Madras High Court takes the view that the shares of any particular debtor can be proceeded against. But I think that view is not of uniform acceptance by the other High Courts in British India. Therefore I am submitting that the incidents of joint holding in the Mitakshara family have presented considerable difficulty. It is necessary that a definite provision should be enacted. In the absence of a clear provision to that effect, the chances are that it would require a further welter of conflicting decisions, and a final pronouncement of the High Court of Travancore, before the people can feel themselves to be on *terra firma*. That means a great deal of expenditure of money and worry.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Are not the shares of members in a makkathayam family atttachable now ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I know some people attempt to do it. But there is no final pronouncement on this matter. My friend knows that we have three Full Bench judgments on this—one during the time of Mr. Raman Menon, another during MR. S. T. Viraraghavachari's time and another by MR. Raman Tampi, and yet another ruling just now, which I myself have not read, and which

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[Mr. K. Parameswaran Pillai.]

some of my friends style as only *obiter* observations. Therefore there are at least four Full Bench rulings upon Section 17 of the existing Nayar Regulation and probably more rulings might have been possible if there had been occasion for the same. In all this welter, nobody knows where he is. No creditor knows what right he has and no member knows what exactly is the hardship that will be caused to him. So in the interests of all concerned, creditors and debtors, karanavans and junior members, makkathayam and marumakkathayam property, I would enact a definite provision with respect to the nature and incidents of such property. My friend has been good enough to make such a provision with respect to tarwad property. I would press that the property that is obtained from the husband or the father as the case may be be placed on a footing with tarwad property till partition. It is with that object I have moved my amendment and I would request the Council to accept it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I second the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, personally, however much I might sympathise with my friend, I am sorry I am unable to accept this amendment with regard to those properties obtained by gift and bequest. There are two classes of properties like that. That is to say the properties which were obtained before Regulation I of 1088 came into force, by way of bequest or gifts from fathers or husbands, and those obtained after Regulation I of 1088. Section 40 applies to such gifts and bequests and therefore no special provision is necessary, because Section 42 says "property acquired by gift, bequest or in any other manner from the father or husband before Regulation I of 1088 came into force shall for the purpose of this Chapter, be treated as the tarwad property of the donees or devisees and of their thavazhee."

Therefore all properties which a person or a group of persons obtained from their father, would be treated as tarwad property of the donees or devisees and would be subject to the same law in regard to partition as well as to heritability, alienability and so forth as provided for in this chapter. No provision is necessary so far as the property obtained by gift or inheritance before Regulation I of 1088 is concerned. In regard to those that were obtained after 1088 it is impossible to accept this provision because we have already made it heritable and alienable. You will see, Sir, from Section 23 that "property acquired by gift or bequest by the wife or widow or child or children from the husband or father as the case may be, after Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the instrument of gift or bequest, if any, belong to the wife or widow and each of the children in equal share," and Clause 2 says that "the rules for the devolution and distribution of the property of an intestate as hereinbefore provided shall, so far as they may be, apply

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to property mentioned in sub-section (1), as also to property acquired under Regulation I of 1088 and under Section 22 of this Regulation." So that in regard to the rules for the devolution—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Section 23 has not been discussed.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It has been passed, I believe.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It has not yet been passed. Its consideration has been postponed because of the occurrence of the expression " in Section 22."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In that case, I submit, so far as the properties acquired by gift or inheritance are concerned, the amendment may be postponed for consideration. If that is to be the valid course of inheritance—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out, Sir, that sub-Clause 1 of Clause 28 was passed?

PRESIDENT: The Clause has not been completely considered.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): With regard to the property obtained before and after Regulation I of 1088, I would request my friend to postpone his amendment till Section 23 is discussed.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): A piecemeal discussion of the Clause is not of any good. So I would request the President to say whether the consideration of this may not be postponed to be considered with the allied group of Clauses 22, 23, etc.?

PRESIDENT: Yes, it may be postponed.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): I beg to move the following amendment: Add the following explanation to the Clause:

"The word 'partition' includes the severance of the joint nature of the tarwad by notice of intention to divide or by suit."

The word 'partition' in this Section is likely to give occasion to some difficulty. In respect of this matter there are several stages. There may be in the first instance a notice of action to secure partition. There may be a suit to secure partition. There may be a preliminary decree for partition and there may be the final decree for partition. One has to be sure when the incidents of inalienability and unattachability would be fixed with reference to such property. Under the Hindu Law, the moment the notice of division or the notice to divide is issued a severance is effected of the joint character of the family. I do realise that the word used here is not division but partition. Even using the word partition and understanding by it not the case of a severance of the joint character of the joint family itself, there are yet three stages left. There is a suit for partition from an individual or a group of individuals entitled to partition. After filing a suit they may be entitled to sell away the right. Can such right be

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[Mr. T. K. Velu Pillai.]

attached? Then again, suppose a preliminary decree for partition has been passed; after such decree can such decree be attached, or having come to the final stage, do the incidents of inalienability and attachability fix themselves upon the decree? These matters have to be defined, and we must have fixed ideas about them. Therefore I move the amendment.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I oppose the amendment. I would have been glad to accept Mr. Krishna Aiyar's amendment if the word 'partition' as understood in this Bill was to make partition in a tarwad at the instance of a stranger. The partition must be done with the consent of all the members. No suit as far as possible should be maintained at the instance of a total stranger to the tarwad. There are several reasons why we should by legislation avoid such a partition.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Does Mr. Paramesvaran Pillai mean final decree or the preliminary decree for partition?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Final decree. Of course the amendment brought forward by Mr. Krishna Aiyar is a matter covered by a decision of the Privy Council. In the case of joint Hindu families if a member makes known his intention to divide either by notice or in some other manner he must have acquired a divided status.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I ask whether it contemplates cases of separation or of partition?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is a case of separation. It is doubtful how far it will be applicable to a case of separation under this Regulation. In any case we do not want to make it possible for a stranger to enforce partition in any case whatsoever. Therefore I oppose the amendment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am also against the amendment. There is considerable difference between the effects of division in aHindu family and in a marumakkathayam family. There is also difference between the circumstances which will make partition desirable or possible. It is well known that in a Hindu family it is only the males that can ask for partition, whereas in a Nayar tarwad, females also can get their share. Now, Sir, those people who advise partition should bear in mind the interests of the females also. Seeing that the husbands of the women may advise them in one way as to whether they should ask for a partition or not, and their friends may give advice in another way, and the relations of the wife may also give one advice, in the peculiar state of our law when our children and

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men and women have equal rights in the property, a rule like the one enunciated by Mr. Krishna Aiyar will be greatly prejudicial to the Nayar community, because, if once notice of intention is given for good or for bad reasons, a valid notice is given and rights will accrue which will not be in the interests of the community. It is the intention that is important. The period of effecting partition in other systems of law ought not to have a place in the marumakkathayam system. So I oppose the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I also beg to oppose the amendment, Sir. What exactly would constitute partition or separation of any one individual member in a Hindu co-parcenary is a subject of very wide range. It may be that a notice served showing the intention to separte would occasionally constitute an act on the part of the member in furtherance of his desire to separate. A suit instituted but withdrawn has been interpreted by some of the Courts as tantamount to a step in the direction of separation. But these are all cases of the separation of any one particular member from the joint co-parcenary. In spite of the separation of one member from a co-parcenary there is still the possibility of other members continuing united. They are not strictly speaking acts which evidence a partition of the family property. Therefore we shall not be justified in confounding such unilateral acts on the part of the members as tantamount to an act of partition in a family. Therefore this particular amendment which selects only one particular act from a bundle of acts which may go to indicate a desire on the part of any one particular member to separate from the majority comprising the family cannot be taken as equivalent to a status of actual partition.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): May I know whether Mr. Narayana Pillai understands by the word 'partition' only the final decree for partition?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Exactly. For, even if a suit is instituted, it has to pass through various stages, though not under the present Civil Procedure Code in Travancore, yet under the Civil Procedure Code Mr. Subba Aiyar has reserved for discussion in the Council. In that we have provided for two stages, one stage ending with a preliminary decree and another with the final decree. A final decree will follow upon the preliminary decree. Unfortunately cases are not so infrequent which show that, even if a preliminary decree is passed, by certain confluence of circumstances such a preliminary decree may be got rid of and the final decree will not follow. Such cases are reported in the Law Reports. Therefore, by merely getting a preliminary decree one is not able to predict that a final decree must necessarily follow. Therefore I would submit that until a final decree for partition is arrived at—

RAO BAHDAUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Does he contemplate an actual division by metes and bounds?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is not necessary. I am speaking of a final decree for partition.

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[Mr. P. K. Narayana Pillai.]

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): Does he convey it to the stage when delivery of possession takes place?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Not to that stage. The ascertainment of the exact shares of any one member of a family is alien to the present question. And since a decree is assignable it does not matter if any stranger is at liberty to take it from any one member, but till the actual ascertainment of the exact share of any one particular member it will give room to wrangling on indefinite grounds. Therefore the Clause reads as "until partition."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I draw my friend's attention to the possibility of the claimants of partition increasing in number or going down in number after the institution of the suit?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Even after the preliminary decree is passed other members may be added on to the family; then the shares of the members will be fluctuating.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): But when you ask for a decree you ask for a specific share as on the date of suit.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If in the interval persons are born, that will be presenting a new problem which my friend Mr. Krishna Aiyangar and myself will have to tackle.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Suppose in a case there are six persons entitled to the property and one man sues for his share. What will be the case of the other persons?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): They also will be entitled to their share.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): Supposing there are only two individuals and one files a suit for partition, at what stage do alienability and attachability begin to operate?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): After the final decree. It is impossible to ascertain what exactly will be the share of the property he will be entitled to till the final decree is passed.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask whether that matter cannot be left to a court of law?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is a piece of legal curiosity and quidnuncery, that prompts my friends to put a riddle to me for solution without paying for it. (*Laughter.*) I would submit therefore that the expression 'until partition,' has been inserted advisedly. It means the actual final decree for partition. Otherwise, the ascertainment of right by a deed of partition or separation of interest

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or any arrangement which would indicate the exact share of the property to which any particular member will be entitled will be very difficult. Before that, if a stranger is going to be introduced into a marumakkathyam tarwad, there would be difficulties of a very wide and extraordinary nature to ascertain the rights of the members as regards their residence, maintenance and all manner of things in the family. It will be extremely difficult to reconcile all these and it is not with any other object that this provision was introduced. Hence, I have very great pleasure in supporting the original clause as settled by the Select Committee and opposing the amendment now brought forward.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There is some force in Mr. Krishna Aiyar's argument that we must make it clear as to what exactly is meant by the expression 'until partition'. Although we may not attach the same meaning to it, namely, 'until division is effected,' it is likely to be misconstrued in view of the fact that in divisions under the Mithakshara law various acts are supposed to constitute an intention to divide. Certainly I am not for saying that, simply because a person sends a letter to the other co-pareeners saying that he should get his share, he should be deemed to have divided. There is no doubt that that is the law so far as the Mithakshara law is concerned. To my mind that will be going rather too far. So that that contigency has to be avoided. Similarly in the case of suits also. I am at one with Mr. Krishna Aiyar in thinking that it is desirable that we should make it clear as to what exactly we mean by partition, as otherwise analogies of Mithakshara law are likely to be drawn and the court may follow the same. I for one would restrict it to cases where a document or deed has been executed and registered or until a preliminary decree for partition is made. My friend Mr. Narayana Pillai said that that should be the final decree. There is a preliminary decree in cases for partition and it would say that the plaintiff is entitled to a definite share of the property. Therefore, when such a decree is made, when the plaintiffs are entitled to have their shares divided and when a decree is made that they are entitled to such a definite share, then, I believe, the rest is only the work of the Court Commissioner and not of the court itself. It is the Commissioner who goes to the spot, ascertains the extent of the property and makes a division of it which is accepted by the court when the final decree is passed. So that I would define partition as meaning a transaction by which the parties get themselves separated by a registered instrument or by a preliminary decree for partition by a court. Some such explanation is necessary instead of leaving it as it is. Mr. Krishna Aiyar has brought forward an objection. Such objections are likely to be brought forward by the court. Therefore it is better to restrict it to these two cases.

PRESIDENT: That is not the form in which the amendment is moved.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As far as the amendment is concerned, I oppose it.

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[Mr. S. Krishna Aiyar.]

MR S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): The amendment refers to individual partition. At one time it was admitted by Mr. Paramesvaran Pillai and Mr. Narayana Pillai that a large majority of the Nayar community say that they should have absolute individual partition, and I remember Mr. Narayana Pillai and Mr. Paramesvaran Pillai being present and addressing a very large meeting in North Travancore on the same subject. But, however, as they have now restricted the scope of individual partition, I am free to concede that the word 'partition' includes the severance of the joint nature of the tarwad by notice of intention to divide or by suit. It was therefore that I suggested at the outset the four stages at which it may be supposed that partition begins. I am prepared to accept the suggestion of Mr. Subba Aiyar to the effect that partition must be taken to have been effected at least when a preliminary decree has been passed. Under Hindu Law, separation or divided status is effected as soon as a share that a party is entitled to has been defined with or without the consent of the parties. However, we need not go that length. If you, Sir, permit me, I beg to amend the amendment itself, by inserting the following words. "The word 'partition' shall mean a preliminary decree or an instrument of partition between the members of the tarwad defining the shares of the properties."

PRESIDENT: I cannot permit that. There seems to be a difference of opinion among some members of the House that it should be the final decree. So, I do not think I could permit that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): My friend would do well to withdraw the amendment and bring in a new one.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Karthigapalli*): In which case I withdraw the amendment.

However, I have to point out that since individual partition or the right to individual partition is insisted upon by this Council and by the Nayar community, it would be a case of running with the hare and hunting with the hound, by trying in the first place to get individual partition and secondly sheltering themselves within the shadow of Section 40. I withdraw the amendment.

The motion was, by leave, withdrawn.

The Council adjourned at 5 P. M.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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